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CIS

STATE IMPLEMENTATION OF FEDERAL STANDARDS

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

PART 3

THE RESOURCE CONSERVATION AND RECOVERY ACT

NOVEMBER 24, 1981

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STATE IMPLEMENTATION OF FEDERAL STANDARDS

TUESDAY, NOVEMBER 24, 1981

U.S. Senate,
Subcommittee on Intergovernmental Relations,
Committee on Governmental Affair,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 5110, Dirksen Senate Office Building, Hon. Dave Durenberger (chairman of the subcommittee) presiding.

Present: Senator Durenberger.

OPENING STATEMENT OF SENATOR DURENBERGER

Senator Durenberger. The hearing will come to order.

This morning we continue with the third in a series of hearings on what we have labeled "State Implementation" or "Intergovernmental Regulation." Simply put, these labels apply to programs where a Federal agency sets certain national standards, as mandated by law, and looks to the States to administer and enforce them. The common feature of the programs is that the States are given the option of developing implementation plans and assuming enforcement responsibility. If they choose not to participate or if their plans and enforcement provisions do not meet Federal requirements, the Federal agency takes over.

The intent of these programs—the Clean Air Act, the Occupational Safety and Health Act, the Resource Conservation and Recovery Act and others—is to regulate private sector activity. When Congress enacted the various laws, over a period of several years, it envisioned a partnership between Federal administrators and State leaders, including Governors, State legislators, and State administrators.

Officials at both levels were to cooperate in regulating private sector activity. Unfortunately, the partnership has not always worked smoothly in practice. State officials have identified a number of obstacles that impede their attempts at effective program management—for example: Delay and inflexibility in Federal regulations; excessive Federal oversight and duplication of effort; and delay and uncertainty in Federal funding.

After a decade of State implementation it is time to reexamine these programs and to consider reforms that would improve the management process. This reconsideration should be an important part of the President's New Federalism. As in so many other instances, budget considerations are having an impact on this aspect of Federalism, as well.

Major cuts in the EPA budget, initiated first in the administration's proposal of March 1981, and again in September, have resulted in a

16-percent reduction for the agency in the current fiscal year. The administration's proposed budget levels for fiscal year 1983, as reported in the press, sink the budget ax even deeper into the heart of EPA's basic programs.

The New York Times has reported that the OMB proposal would cut the fiscal year 1982 level of $1.35 billion back to $700 million in fiscal year 1983. Further, and of particular interest this morning, the OMB reductions for the hazardous waste program are reported to be as high as 65 percent. The proposed cut in research and development is 51 percent; and 34 percent is to be cut from grant programs to the States which assure adequate development and enforcement of the State implementation programs.

Before we go forward with budget reductions of this magnitude, I think we have to ask if this is what the President meant when he promised a New Federalism. Do budget proposals of this type promote the return of new responsibilities to State and local governments? Evidence from our first two hearings in this series indicate that, when Federal grant funds are inadequate to support State-administered programs, the States simply drop out of the process. The State and local governments have priorities of their own. Participating in a difficult and complicated Federal regulatory scheme, with no financial support from their Federal partner, is hardly among their priorities.

We could also ask whether these budget reductions make sense from the perspective of the other major promise made in the President's campaign—that we would get the Federal Government off the backs of the private sector. Many of the reductions come in research and development. The folks down at OMB have a tendency to see research and development as paperwork from consultants that lays on the shelf. However, in the case of a major regulatory program like RCRA, this data is essential to the process of standard-setting.

Without research, management of hazardous materials is a very uncertain undertaking. In the face of uncertainty, the natural inclination of a regulator is to select very stringent standards to assure that the public health and safety is protected. A fuller understanding of the material and the parameters of the management process—an understanding which can only be gained through research and development—will often mean a more flexible and less stringent standard.

I come into this hearing very concerned by the budget proposals which I saw reported in the press over the weekend. We should not focus solely on these issues in our discussion this morning. They can serve, however, as a backdrop to the discussion of the appropriate partnership in the State implementation process and the regulatory theory which we now use in the case of waste, water, air and worker health and safety.

Senator Jim Sasser has an opening statement which will be inserted into the record at this time.

[The statement follows:]

Opening Statement of Senator Jim Sasser

Good Morning. I want to express my appreciation to Chairman Durenberger for holding these hearings today in his continuing effort to study the implementation of Federal programs by Federal and State agencies.

What concerns me most today is that while the administration advocates regulatory reform, regulatory streamlining, and the transfer of regulatory authority to State governments, the administration of the Resource Conservation and Recovery Act has provided for duplicative regulatory processes, inadequate technical guidance to the States, and regulatory delay. This is hardly regulatory reform in the truest sense of the word.

Let me get to some particulars. Over 40 million tons of hazardous waste is produced annually. However, only 10 percent of this amount may be acceptably managed. Eighty percent is disposed of in non-secure sites, and ten percent is improperly incinerated. Moreover, the annual waste production of this Nation is predicted to increase by 3 percent per year. Meanwhile the problem of finding, monitoring, and cleaning up the several thousand old waste sites remains.

Under the Resource Conservation and Recovery Act of 1976, the Federal Government is required to provide technical and financial assistance to the States to implement the planning and development responsibilities under the act. Whether the EPA has fulfilled its role in this area is in doubt.

For example, consider the regulation of land disposal hazardous wastes—generally the cheapest and most prevalent method of hazardous waste disposal by American industry. This past February, EPA ruled that States would not be able to issue land disposal permits without final EPA standards on the subject. So now both EPA and the States have interim standards for this process. The congressional intent that the States take on this permitting responsibility has not been fulfilled. Yet Administrator Gorsuch maintains that encouraging States to adopt interim standards would be a disservice to the States. But I want to remind Administrator Gorsuch that the States need only have regulations which are "substantially equivalent" to Federal standards. State regulations can be more stringent than Federal ones, but in any case they must be up to a basic Federal standard. If States wish to adopt more stringent standards, EPA should not stand in their way.

EPA has also placed a stay on regulations regarding surface storage and the incineration of waste for existing facilities. No indication has been given as to when these regulations are to be rewritten or when permitting would resume under existing language. This is but another example of the problem of regulatory lag that is a disappointment to industry and State administrators alike.

Then there is the problem of Federal funding. We are all aware of the President's proposed 12 percent reductions made in September, and we are all awaiting the further details of budget cuts to be proposed in January. Presently proposed cuts will mean some $6.1 million less for EPA regulatory and implementation programs affecting hazardous waste disposal planning. I certainly hope, however, that Administrator Gorsuch plans to continue a vigorous effort to appropriately fund EPA's hazardous waste program in the years ahead.

In short, I hope that EPA gets on with the job of promulgating sensible and effective hazardous waste regulations. I hope that it works with States to get effective regulatory systems underway and that it continues its efforts to fully apprise the American public of the programs and regulations that are needed to combat any inefficiencies in our efforts to properly dispose of hazardous wastes.

Senator DURENBERGER. Our first witness this morning is Anne Gorsuch, Administrator of the U.S. Environmental Protection Agency.

Mrs. Gorsuch, you have assumed one of the more difficult and demanding positions in the Federal Government. We appreciate the time you are taking from your very busy schedule to be here with us this morning.

Mrs. GORSUCH. Thank you, Senator.

Senator DURENBERGER. We were concerned yesterday that you might not be able to make it. That, of course, was the reason why we passed the continuing resolution. [Laughter.]

Do you have a prepared statement that you would like to make at this time?

TESTIMONY OF ANNE M. GORSUCH, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY JOHN SKINNER, DIRECTOR, STATE IMPLEMENTATION PROGRAM UNDER RCRA

Mrs. GORSUCH. I do, Mr. Chairman. I would also like to introduce Mr. John Skinner who is here today and in charge of our State implementation program under RCRA, the Resource Conservation and Recovery Act.

I am pleased to have the opportunity to be with you today. Among our highest priority objectives are the improvement of EPA-State relationships in general and to delegate responsibility for environmental programs to State governments wherever possible. I intend to see that EPA works with State governments in a flexible and reasonable manner and that we support and assist States in the development and implementation of governmental programs. State leadership is essential for safe and environmentally sound management of hazardous wastes. We must rely on the resources and expertise of State governments to achieve these and other important national environmental goals.

Under RCRA, EPA is required to identify and characterize hazardous wastes and to develop Federal standards applicable to individuals that generate, transport, treat, store or dispose of those wastes. EPA has the authority to carry out inspections to determine compliance with these standards, to issue permits to treatment, storage or disposal facilities, and to take appropriate enforcement action in the case of violations. One of the most important provisions of the law is section 3006 which allows the Agency to authorize States to administer and enforce State hazardous waste management programs "in lieu of" the Federal program.

This section establishes the minimum standards for State programs to receive authorization. In order to qualify for final authorization, a State program must be equivalent to the Federal program, consistent with the Federal program and other State programs, and must provide adequate enforcement, recognizing the fact that it will take States some time to develop programs capable of receiving final authorization of existing State programs.

In order to qualify for interim authorization, a State program must only be "substantially equivalent" to the Federal program. The Agency's regulations which establish the procedures for States to apply for interim and final authorization were published in May 1980, with revisions in January 1981.

As you are probably aware, the Agency has not yet issued all of the hazardous waste regulations required by the law. The first set of Federal regulations, referred to as phase I, became effective in November of 1980. In order to allow State governments to take formal responsibility for the program as soon as possible, the Agency decided to allow interim authorization to occur in phases corresponding to the phased development of the Federal program. Therefore, as of November 1980, States could receive phase I interim authorization.

Under phase I States can be authorized to: list and identify hazardous waste; enforce standards for generators and transporters to such wastes; and enforce preliminary standards, interim status standards, for hazardous waste treatment, storage and disposal facilities. The States' response in this area has been outstanding. As of today, 27

States have received phase I interim authorization, and 18 additional States are expected to apply by mid-1982.

Of the 29 States and territories without interim authorization, we have established 27 cooperative arrangements in fiscal 1981. Under a cooperative arrangement a State can assist the Agency in administering those parts of the Federal program that State laws and regulations allow. States with cooperative arrangements have been conducting inspections, receiving reports and carrying out other tasks on the Agency's behalf. We have found this to be an excellent mechanism for States to assume a primary role in regulating hazardous wastes prior to formal authorization.

Both the regulations and the statute have allowed relatively little flexibility for the States, while creating an incredibly complex situation. Therefore, it is amazing to me that the States have demonstrated such a willingness to assume the program and the frontline responsibilities for its implementation. As you know, the development of the regulations has been an involved, complicated and lengthy process.

The Resource Conservation and Recovery Act was signed into law on October 21, 1976—over 5 years ago. Despite the congressional requirement that the Agency issue regulations to implement the law within 18 months, the previous administration took until May of 1978 before the first proposals were published. The first set of rules which were promulgated in final form were published in February 1980, nearly 3½ years after Congress originally passed the legislation.

To make matters even more complicated, almost all of the proposed rules generated massive comments. The May 1978 publication generated over 1,200 individual comments, which, if stacked, totaled more than 9 feet. The May 1980 proposals elicited more than 3 feet of comments. In other instances totally different approaches were attempted.

For example, the preliminary rules on land disposal facilities which were published in December 1978 were based on specific design standards, while the rules published in February 1981 embodied a case-by-case predictive approach. One factor common to both approaches is complexity in implementation, which was doubtless a factor in generating the more than 600 comments on the February 5 rules and their reproposal.

Currently the district court decision in *Illinois* v. *Costle* (*Gorsuch*) required the EPA to promulgate final land disposal regulations by February 1, 1982. Because of the complexity of the issues, which took more than 15 pages in the Federal Register to outline, we have already received more than 2½ linear feet of comments on the February 1981 land disposal regulations, although the comment period ended only in October.

Because of this situation, we had anticipated a need for a solid analysis of the situation to reconcile the totally differing approaches embodied in the previous administration's regulations. Thus, it would not be possible to issue final regulations until the fall of 1983.

Whether or not to appeal the court's decision has not yet been decided. If the decision is not appealed, of course, we intend to meet the February deadline.

The second phase of the Federal hazardous waste program covers the issuing of permits to facilities that treat, store, and dispose of hazardous waste. Many of the technical standards required for issuing such permits were promulgated as interim final rules in January of 1981. These covered standards for storage and treatment of hazardous wastes in tanks, containers, piles and surface impoundments, and standards for hazardous waste incinerators. In addition, in February of 1981, the Agency promulgated temporary standards for issuing permits for new land disposal facilities and proposed standards for existing land disposal facilities.

Although these rules were scheduled to go into effect in July and August of 1981, we received many comments expressing genuine concern about the suitability of these regulations as they apply to existing incinerators and storage surface impoundments. In light of these comments, we are proposing to temporarily suspend the effective date of these rules for existing incinerators and existing storage surface impoundments until we reexamine them and address the comments received. However, these rules will be used as the basis for issuing permits to new facilities.

These changes in the phase II technical standards affect the authorization of State programs. At this time States may receive phase II interim authorization to issue permits to those facilities for which the Agency has published permanent standards. This means that States may receive authorization for permitting new and existing tanks, containers and piles, new incinerators and new surface impoundments. The position taken by the Agency to date is that States cannot receive interim authorization to permit existing incinerators and existing surface impoundments or new or existing land disposal facilities until the Agency issues final standards for these facilities.

While the Agency is not currently authorizing States to issue permits to land disposal facilities or to existing incinerators and surface impoundments, I realize that there are pros and cons to this position. We felt that it would be doing a disservice to States to encourage them to adopt standards that the Agency is planning to revise substantially or suspend. However, several States have indicated a willingness to accept this uncertainty in order to receive authorization for the entire phase II program at this time. Therefore, I am willing to reconsider this position.

In the October 20, 1981, Federal Register, we asked for public comment on whether we should authorize States to issue permits to existing incinerators and impoundments in light of the proposed suspension of Federal standards for those facilities. For land disposal facilities, we will reconsider our position on State authorization as we develop the standards ordered by the court on February 1, 1982.

One of the challenges for the future in implementing RCRA is for EPA to simplify the regulations; to eliminate the redundancies and, to the extent possible, reduce the complexities. This is an ongoing effort, and one we are undertaking bit by bit, procedure by procedure, Federal Register notice by Federal Register notice.

Over the past year we have made many changes in the phase I regulations that have resulted in less burdensome and more flexible requirements. If these changes are adopted by States, the States' programs will be easier to administer and more cost effective. The two most recent changes were published on November 17. One of these allows the landfilling of small containers of liquid wastes provided they are placed in drums packed with absorbent material. This change provides a viable disposal option for persons who produce small quantities of many different liquid wastes.

The second change revises the "mixture rule" for small quantities of hazardous wastes. As previously written, if a tiny quantity of hazardous waste was mixed into an industrial wastewater stream, the entire wastewater treatment system would be subject to regulatory control. This has been revised to exempt wastewaters containing very small quantities of certain wastes. This change will substantially reduce the regulatory burden without posing any significant risk to human health and the environment. Through these changes and many others like them, we are trying to craft a more workable program for both EPA and the States.

In all these changes, of course, we continue to experience the frustrations created by the application of the Federal Advisory Committee Act, which prevents the full, continuing and direct input from the States during the formulation of new and revised regulations.

The major legal obstacle we see to greater involvement of the States in EPA decisionmaking is the Federal Advisory Committee Act. The act imposes a number of burdensome procedural formalities on any group "established or utilized" to advise a Federal agency. The literal language of the statute is very broad, and though I am advised the courts have not read it quite literally, I am further advised they have made clear that any group to which an agency gives preferential status and consults with repeatedly is very likely to be held an advisory committee. I am also advised the courts have also made clear that the act applies to organizations representing State and local governments.

Under the Federal Advisory Committee Act, we believe that we can meet freely with States at their request to discuss common issues, just as we meet with any interest group. However, we question whether we can go further than that; for example, whether we can put States on the working groups that develop the EPA regulations. We are exploring some new possibilities for dealing with this issue that may produce some relief. However, they are likely to be cumbersome at best, and we believe the best solution to this problem may well lie in legislation.

I realize that this situation, along with the changes and delays, has created confusion and uncertainty for the States. States are not applying for phase II interim authorization as quickly and aggressively as they applied for phase I. To date, we only have six applications from States for phase II interim authorization. However, over 20 more are expected by mid-1982.

While I regret these changes and delays, unfortunately they are necessary if the Agency is to issue standards that are both appropriate and cost effective. Many provisions of these regulations are being reexamined in response to litigation. Others are being reviewed in response to Executive Order 12292 and the Vice President's Task Force on Regulatory Reform.

I consistently admire the States' willingness to accept responsibility for the RCRA program, and feel that such willingness is a clear indication of our partners' at the State level strong commitment to a better environment.

Although we will continue to work with the States, it will be months before the final revisions to phase II interim authorizations are available and promulgated. When the permanent standards for the remaining facilities are published, a complete Federal program will be in effect, and at that time States may move into final authorization.

I would like now to turn to some of the specific questions that you asked in your letter.

You asked how we were going to deal with the "consistency" issue and the complaints from multi-State corporations about inconsistent and conflicting standards among States. This obviously is an important question because it concerns trade-offs between our desire to provide flexibility to State programs and our concomitant desire to provide consistency to the interstate hazardous waste management industry.

RCRA itself appears to provide conflicting signals on this issue. On the one hand, section 3006 says that in order to receive final authorization a State program must be equivalent to and consistent with the Federal program and substantially equivalent for interim authorization.

However, section 3009 also states that nothing in the act shall be construed to prohibit any State from imposing any requirements which are more stringent than those imposed by EPA, obviously a dual test which requires careful balancing. It is not clear from the legislative history how these two sections are to be considered relative to each other.

The strongest case for the Federal Government preventing inconsistent State requirements is where such requirements place an undue burden on interstate commerce. Another area where a State program would be considered inconsistent with the Federal program is where the State program discriminates against out-of-State wastes. A U.S. Supreme Court decision has held that such statutes are unconstitutional because they violate the interstate commerce clause. Also, State requirements that forbid the construction or operation of hazardous waste disposal facilities with no environmental basis might be subject to attack under the interstate commerce clause.

As I mentioned earlier, we are working to solve some of the problems created by differing State requirements and the need to reduce unnecessary paperwork. For example, phase I regulations did not require the use of a specific manifest form for the shipment of hazardous waste. States and industries were free to use any form as long as it contained certain minimum information. This was done to provide flexibility to State programs and to hazardous waste generators and transporters.

Many States have developed their own manifest forms with different designs and different information requirements. Transporters that carry wastes interstate often have to carry multiple manifests, one for each State through which they travel. Multi-State corporations must use different forms for facilities in different States. This is clearly unnecessary and counterproductive paperwork. Therefore, within the next few weeks, the Agency will be issuing a proposed regulation requiring the use of a uniform national manifest form. This form was developed in conjunction with the Association of State and Territorial Solid Waste Management Officials and the Hazardous Materials Advisory Committee. The U.S. Department of Transportation will simultaneously propose the use of this form under the authority of the Hazardous Materials Transportation Act.

After taking public comment, we intend to finalize this regulation early next year, and it will go into effect for both interstate and intrastate transportation of hazardous wastes. At that time, States will be required to use the uniform national manifest form in order to qualify for authorization. In this manner, we intend to reduce the confusion and unnecessary burdens of inconsistent State requirements.

Your letter also asked what role the States have played in regulation development. Our 10 regional offices obviously deal with individual States on a day-to-day basis. Through the regions, our headquarter's regulation writers are informed of State concerns and opinions.

In addition, we have had longstanding relationships with the National Governors' Association and the Association of State and Territorial Solid Waste Management Officials. These groups have given us valuable comments and guidance in developing policies, in preparing guidance manuals for State interim authorization and cooperative arrangements, in designing our land disposal standards and in studying degree-of-hazard approaches to hazardous waste management.

We have found State involvement, limited as it is under FACA, to be very valuable. As a practical matter, however, we cannot continue to have national environmental regulations where the States have the primary frontline responsibilities and not have their continuous input. This situation can only lead to continuing frustration on both sides. EPA designs regulations from Washington without full State input, and then the States, who are on the frontlines in the fight for safer hazardous waste disposal practices, must implement and work with the regulations which have been written without full and continuous State input.

You have also asked whether financial incentives were adequate to assure continued funding of State programs and what other incentives the Federal Government intends to offer. Our grants to States for the development and implementation of hazardous waste programs have been substantial and have increased steadily over the last few years as State programs have developed and assumed responsibility for RCRA activities. Federal grants for these purposes increased from $18 million in fiscal year 1980 to $30 million in fiscal year 1981, and to a proposed $42 million in fiscal year 1982.

While the budget figures for fiscal year 1983 are certainly not yet final, the real challenge to the Agency, in my judgment, is not how to mandate the use of Federal funds, but rather how to make effective rules which make programs understandable and desirable for the States to implement. Our goal should not be to concentrate on the redistribution of incomes through Federal funding, but to use Federal funds as a startup procedure to enable States to move into full partnership and responsibility for State programs under RCRA.

Thus, the primary incentive for the development of State hazardous waste management programs is not the availability of Federal dollars, but rather the States' self-interest, both environmentally and economically.

The citizens of the United States are demanding safe and environmentally sound hazardous waste control from all levels of government.

State programs will develop in response to this need. In addition, secure and safe hazardous waste sites are essential for industrial development. Many industries will not choose to locate in States that do not assure the availability of such facilities. This is evidenced in the recent development of legislation establishing siting boards in several States.

Therefore, I think the natural incentives for the development and implementation of good State hazardous waste control programs are quite strong. I think we will continue to see active State involvement in this area.

This concludes my prepared remarks, Mr. Chairman. I would be happy to respond to any questions you may have.

Senator DURENBERGER. Thank you, very much.

Let me start with one observation and then pick up where you left off.

We appreciate the concern which you have articulated about the Federal Advisory Committee Act. We have amended the regulatory reform bill in order to exempt State and local officials and their organizations from FACA and this is a good illustration of why we did it.

Now, our only problem is, will we ever get to see regulatory reform before the U.S. Senate.

Let me start at the end of your testimony. There is a similarity between my opening statement and the comment you made near the end of your statement. That is that the budgetary challenge and the Agency challenge in the coming year, or so, is not how to mandate the use of Federal funds, but how to make effective rules which will make programs understandable and desirable for the States to implement.

You went on to indicate that there is a difference here, for some reason. I am sure there are examples of the problem in all the 50 States. There is a difference between this program and some of the others we have looked at where States have dropped out without Federal funds of one kind or another.

Clearly, the cooperation which EPA has been given under the circumstance means that the States appreciate the problem. The solutions to the problem have a fair amount of public support in the States. Your observation is probably accurate—the primary incentive for the development of a State hazardous waste program is not just the availability of Federal money to carry out the Federal mandate, but rather the State's interest.

Let me start out by asking you the practical question in terms of what we do best—you and I and whoever else is involved in this whole process. What is, or should be, the Federal role in this particular regulatory program?

You have to administer several of the so-called State-Federal partnership programs in your agency. Would you take a brief try at defining the Federal purpose which is involved here before I start asking you some specific questions?

Mrs. GORSUCH. Thank you, Senator.

Painting with a very broad brush in terms of the general constraint of all of the environmental laws the Congress has enacted, I think the proper Federal role and challenge is to develop a meaningful and workable program that can be delegated to the States for their implementation.

Obviously, the nuances of that broad-brush approach will differ as we talk first about clean air or clean water and then certainly as we go on to hazardous waste management. But the challenge, I believe, to the Federal level regarding hazardous waste management is to define a simple, straightforward program in a highly particular area and to do it with as few inconsistencies, redundancies, and as little repetitiveness as possible.

Also, as I indicated in my statement, there is a real challenge in meeting the desirability of consistency and simultaneously allowing for flexibility in terms of State implementation of the program.

I believe in the New Federalism. I think there is great merit in having 50, as it were, national laboratories out there for experimentation in government. But in the environmental area, it hardly makes either economic or good government sense for each of these 50 laboratories to be developing ab initio, individual programs in the environmental field.

The challenge is to develop the program and then to allow flexibility while trying to balance that against the need for consistency.

Senator DURENBERGER. I, too, believe in the concept of redefining Federalism. Part of our problem here is to make the new definition. I take it your answer to the question might differ somewhat if you were looking at the Clean Air Act instead of RCRA?

Clearly, one of the Federal purposes you are already accomplishing is applying a tape measure to the reaction. Everything seems to be measured in feet in your statement—either linear or some other. Let me take the lab concept which you mentioned and see in what context you are using that.

Let's take research and development. It seems to me there would be no point in replicating research and development, necessary to regulate dangerous materials and emissions, 50 times over—all the way across the country.

From a State official's perspective, are we, presently, doing adequate research and development as the Federal partner in this process?

Mrs. GORSUCH. Senator, it is my feeling that the Agency is currently conducting adequate research and development as part of this process. I think, here, it is also relevant to your considerations to know that research and development for hazardous wastes is also relevant in terms of our research and development for water and ground water.

Not one of our programs is necessarily exclusive of the other. We have on-going research and development, for instance, in the water field that is relevant to our considerations in hazardous wastes. Likewise, the research and development that is a component part of Superfund overlaps with hazardous wastes and vice-versa. Some of our research and development in terms of the air program is, likewise, relevant to research and development needs in hazardous wastes.

I would like to say, again, in a broad-brushed sense, I agree with you. The most useful Federal role is to do the research and development which is necessary as the predicate for sound regulation and then look toward the State governments for their interpretations and their needs for flexibility.

Senator DURENBERGER. Part of the R. & D. will have to apply to issues of criteria and characteristics. "EPA is to promulgate criteria for listing hazardous wastes." Then, "Subsection B of this section requires EPA to promulgate regulations identifying the characteristics of hazardous wastes and listing particular wastes."

Now, as I look at this act, there is a possibility that the States will be able to do that same sort of thing. I have heard somewhere during this process that some States are coming up with lists that differ from other States.

Is that a failure in the R. & D. that goes into the characterization process? Or, is that some other failure that relates to chemicals which might be available in one State, or disposed of in one State, and not in another?

Mrs. GORSUCH. We have listed hazardous wastes. We have also listed the general criteria for characterizing hazardous wastes. The differences to which you are pointing—the discrepancies between what the Federal list looks like and what any one individual State's list looks like—is not, in my opinion, a failure of research and development efforts, either at the State level or at the Federal level. Perhaps it is more a function of the conflict inherent in the law which allows States to have more stringent requirements to list additional things that are characterized while simultaneously requiring a substantial equivalent.

Let me be very candid with you. The list of hazardous wastes which is currently a part of our regulations has come under criticism from many sectors in that it does not distinguish degrees of hazard between the various wastes. Certainly, some wastes pose higher hazards than others if not properly disposed. The listing does not make any real distinctions among the listed hazardous wastes at this time. We are certainly exploring the further definition of hazardous wastes into degrees of hazard at this time.

Senator DURENBERGER. Is it a function of additional research and development, or pulling together existing research and development that might have been done at the State level for private industry in order to overcome that problem?

Mrs. GORSUCH. Mr. Chairman, I would say it is probably a function of both. At this time, I am sorry I couldn't give you anything more clear than that. We are looking into, at least, the concept. Conceptually, it is an attractive idea that all wastes do not pose the same degree of hazard against the statutory test, that is, if properly disposed. Therefore, the regulation should be tailored to the degree of hazard posed by the specific waste or category of waste.

Senator DURENBERGER. Let me go to another part of the Federal purpose. Let me use standard setting as an assumed legitimate Federal purpose. I have gotten to this because of these hearings. Whether it is the interstate commerce clause or the nature of the business enterprise in this country, everyone recognizes the fact that States are in competition with each other for the location of business enterprise. The enterprise itself needs to deal in an environment which is somewhat uniform from one State to another.

All this seems to lead to the conclusion that there is great value in a national or a Federal role in standard setting.

Would you agree with that as a legitimate Federal purpose—the business of setting standards?

Mrs. GORSUCH. As a generic concept, yes, I would, Senator. That is constructive; for instance, the Clean Air Act, where we believe that national standards should be set.

Senator DURENBERGER. Now, let's go to the implementation. First—just so I understand it—is there a difference in the law between the treatment-storage-disposal entity and landfills? Or, do the landfills—whatever they are appropriately called here—do they come under the TSD classification?

Are they something separate and thus addressed separately?

Mrs. GORSUCH. It helps me if I think in terms of generators, transporters, storage and disposal; and then within the storage and disposal categories, the various component types—landfills being one of the disposal facilities types.

Senator DURENBERGER. We have three elements. We have the generator of waste and the transporter of waste. In terms of implementation, is that where you ran into the manifest problem?

Mrs. GORSUCH. Problem, exactly.

Senator DURENBERGER. In delegating to the States the option of developing their own manifest, you found you ran into substantial problems.

When we get to the permitting process for the treatment, storage and disposal, what is it, exactly, that States are authorized to do under this interim approval process of TSD?

Mrs. GORSUCH. Could I ask Mr. Skinner to answer that?

Senator DURENBERGER. Sure.

Mr. SKINNER. If they were authorized, for the second phase of interim authorization, they could actually issue RCRA permits to treatment, storage or disposal facilities. Through those permits, they would apply standards to those facilities.

Senator DURENBERGER. OK.

Are States actually issuing permits currently under their own laws?

Mr. SKINNER. Under their own laws, they are; that is correct.

Senator DURENBERGER. Are there a certain number of States that are? Are those some of the 29 or 27 which we mentioned earlier?

Mr. SKINNER. I would say quite a few States have permits now. As we indicated, none have received authorization as of yet. We have received six State applications for that purpose.

Senator DURENBERGER. Explain to me the equivalency business. What is going to happen when we move from the interim to the final approval process in these States?

Mr. SKINNER. In terms of——

Mrs. GORSUCH. The difference between substantially equivalent and equivalent?

Senator DURENBERGER. Yes, right.

Mr. SKINNER. In order to be considered equivalent, the State program would have to be very close to the Federal program in terms of the design of the State program.

Senator DURENBERGER. What rights do the States have to drop out of this process along the way?

Mr. SKINNER. They may do that at any time. Then the program reverts to EPA to administer.

Senator DURENBERGER. If they do drop out, do we have, in effect, two programs operating—an EPA or Federal program?

Mr. SKINNER. That is right.

Senator **Durenberger**. Federal program and a State program?

Mr. **Skinner**. Yes.

Senator **Durenberger**. What is the basic incentive, then, for the State to go to the final approval process? So they have only one program operating?

Mr. **Skinner**. That is basically the incentive, so that they can reduce the amount of regulation in that State for the industries which reside in the State. Otherwise, there would have to be a Federal permit for the facility, as well as a State permit. They would have to go through two sets of hearings, two sets of applications, and two sets of inspections.

Senator **Durenberger**. So, it boils down to either the bureaucratic problem about which generators complain, or the financial problems which the States would face because of duplicate programs?

Mr. **Skinner**. Yes, sir.

Mrs. **Gorsuch**. I would also like to say, Senator, that there really is an environmental commitment in State governments. Many States are anxious to have sound programs but don't have the facilities for developing the program at the beginning. While the incentive is to avoid duplication, in some instances there is also an incentive that stems from a true concern for the environmental quality of their particular State jurisdictions.

Senator **Durenberger**. Can I ask you about the whole issue of the need for Federal funds? I know in your statement—and we have already covered this in a question—that there are motivations other than the Federal moneys. In allocating what Federal moneys are available between the R. & D. function and the State implementation function, I used the 54-percent cut. I was referring to what we read on OMB's cuts for 1983. A 54-percent cut in R. & D. and a 31-percent cut in the aid to the States.

Is that appropriate in light of the things we have mentioned. Or, would it be more appropriate to reverse that and minimize the cuts in R. & D. and whatever in a broad sense goes into accurate, understandable, believable rulemaking; then we would take whatever cuts have to be taken on the side of providing assistance to the States for the implementation process?

Mrs. **Gorsuch**. Well, Senator, you will, I am sure, understand that I am not free to discuss the fiscal 1983 budget proposals regardless of what appeared in the New York Times or the Washington Post.

So leaving that aside, we hope that our budget proposals will reflect the fact that the Agency is a dynamic agency. For example, since RCRA is one of the newer environmental laws passed, there has been a long and torturous sort of development of the RCRA regulations—which I tried to give you a picture of in my opening statement—contrasted with the air program, which is an older program for which many of the States have taken over directing implementation and where there are more certainties in the regulations. It is my belief that our use of Federal funds for State grants in environmental programs is best used to start up a State's efforts in the newer program. Then we could look to the States to make the program their own as opposed to something that comes from Washington.

That doesn't really answer your question about tradeoffs between State grants versus research and development. I think that there is an ongoing need for research and development in all of our environmental efforts. So much of our regulation and legislation is really at the end of science, as it were, but simultaneously, we need to give the States enough incentive in startup moneys to take on new programs, and not look to a continuing Federal role for the implementation of our common environmental goals. These goals are held strongly by State governments. I speak as a former State legislator. I think that the real challenge is developing, for those State governments, workable and viable programs.

Senator DURENBERGER. But where can we leave the whole issue, without getting into any specifics? I understand your problem in that regard. Where can we leave your basic judgment concerning the impact of any Federal reserve reductions going to the States for implementation? Will that vary from State to State? Can you draw some general conclusions?

I am left with the impression that if States want this badly enough, they will find a solution to the problem. That leads me to the second step. That is, you can cut a lot out of the Federal budget in that area, and you still won't come up with a problem. Yet, that does seem to be a hard sell in light of the complaints we have heard from States about the budget cuts in general.

What is your feeling about reducing the amount of State aid in some of these areas?

Mrs. GORSUCH. Senator, I think it can and should be done. I hate to make such a broad statement, because we have State grants under the Clean Water Act, both in terms of water quality and construction grants. We have State grants under the Clean Air Act. We have State grants under the Pesticides Act, TSCA, and RCRA. My answer simply would be only that, a generalized statement.

In the older programs where the States are accustomed to it and have a commitment to it, there is a high degree of certainty that the States will continue the programs—even if Federal funding decreases. I think there is certainly room for arguing a Federal funding role in the newer programs where there is uncertainty in calling for a new commitment on the State level. I think that we could be more justified in continuing to use the Federal funding mechanism to assist the States in a startup mode, but that would be my general approach.

The other thing that we will be trying to do is to give the States some long-term ability to predict what the Federal Government will be doing in terms of future State grants.

I think that, again to the extent we are able—and, of course, you know that is not always possible given the 1982 situation, much less the 1983—but to the extent we can tell the State governments what can be expected and give them enough leadtime to make the change in the transition, the better off we will all be.

Senator DURENBERGER. To the extent that I can read chronology into the record, then RCRA falls under the category of new programs. It probably takes a priority in Federal funding of State implementation over some of these other programs.

Mrs. GORSUCH. That would be my general approach, Senator.

Senator DURENBERGER. Let me ask you a question about alternative funding. I lived through the Superfund experience on the Finance Committee last year. I was frustrated by the inability of the then

EPA—or anybody else—to design a different alternative financing mechanism. It has always struck me that, if you put taxes or user fees or permit fees or whatever at the point where it can be most easily passed onto the consumer of products and can leverage the best compliance with whatever standards we set on disposal and clean air and clean water, you apply it at the level of the generator or the disposer or the transporter or all three. In other words, you put it at that end rather than down in Louisiana on somebody who is fabricating a variety of chemicals.

Where have we gone since Doug Costle sat in one of these chairs a year or two ago and told us, "We just can't do that sort of thing." Not that he was opposed to it. He said we cannot do it. We have a fee that we cannot use to raise money today. You have been demonstrating a general concern for the problem. You have illustrated the concern of the States to find a solution to the problem. We all know that we cannot pay for it with promissory notes. This is our problem with the fiscal year 1983 budget process.

What analysis is presently taking place, or what tentative recommendations might you have for use, relative to either taxes or user fees or permit fees or whatever that would be assessed at the generator, transporter or disposer level?

Mrs. GORSUCH. John, are you prepared?

Mr. SKINNER. Yes, I can address that.

A number of States have adopted user fees of different types. We did a survey about a year ago, and many of these had just recently been adopted at that point in time. They did not have very much operating experience with them.

For example, in Kansas and Tennessee, we understand that they place charges on the amount of wastes that is disposed of out of a particular facility. In other States, they have a licensing fee for generators, transporters, and disposal facility operators.

We are going to go back and look at those States and see what their experience has been, whether they have been able to obtain adequate funding to run the programs through those fees, and if there has been any incentive to reduce the amount of waste generated or to shift the wastes in any particular directions. We are instituting that study right now. We are going to do it in conjunction with the State and Territorial Solid Waste Management Officials. Perhaps we can report to you when that is complete.

Senator DURENBERGER. How long will that take?

Mr. SKINNER. It will probably be 6 months before we complete the survey.

Mrs. GORSUCH. We should make a differentiation. That is, in terms of RCRA—which is the generation, transportation, and disposal to run the programs—but it doesn't impinge on the funding mechanism of Superfund, which is the remediation question.

Senator DURENBERGER. Oh, yes. I was pulling them apart. I was only using the Superfund as an example, as our only exposure to the issue here.

Mrs. GORSUCH. As an example; I understand.

Senator DURENBERGER. The frustration which a lot of us felt when we passed that bill was that we were doing something which was less than adequate. However, it was filling some part of a need.

One last question: Do you have anyone at EPA who is examining the whole issue of this intergovernmental partnership, from the perspective of all of the programs which you administer, to see what can be learned to make this whole system run more smoothly?

Mrs. GORSUCH. Well, each of my frontline managers—each assistant administrator who is in place—knows of and shares with me a strong commitment to reestablish this partnership with the States and bend in the adversarial nature of past administrations. I feel very strongly that we have set high environmental goals for ourselves as a Nation. The attainment of those goals can only come through a strong involvement of State governments.

Likewise, our general counsel is looking at the entire question of how to get ongoing and continuous input from State governments in the development of regulations in each of the programmatic areas.

I would just like to take this opportunity to commend your next witness, Mr. Norm Nosenchuck of the Association of State and Territorial Solid Waste Management Officials. They have been very, very helpful to us. Any assistance you can give us in doing away with the legal barriers to their continuous input would be beneficial to all of us.

Senator DURENBERGER. Can I ask you a time-line question about the general counsel and various people who are working with you on smoothing out the relationships, and so forth?

My concern—and one of the reasons we have been holding this series of hearings this year—is we have not put up with this administration being characterized as either antienvironmental or antinatural resources or antisomething good for something like 6. 7, or 8 months, only because of what was happening on the budget side.

Unfortunately, we had another member of the Cabinet once make a statement about using the budget process as a means to set policy. We have suffered from that ever since, particularly those of us who have been trying to help an environmental effort and a lot of other efforts. Yet we have not gotten over the hurdle that you, the President, or a lot of other people are using the budget process, in one way or another, to substantially change public policy without regard for how we can do it better—by working out better relationships with industry and State governments to make the process work. The impression is being left with people that we are trying to undo the environmental progress by just taking money out of the system.

That is why I am asking you this question. Are you, within your own agency, cognizant of the intergovernmental relations problem? Are you trying to build some sense of policy into your budget recommendation and trying to do that in this year or as early next year as possible? We don't want to have to go down to the floor and defend ourselves against the Gary Hart resolution which will give you money that you may not need. That is not necessarily going to improve the process.

It seems to me that we have to get down to the point where we address the Federal role and finance it from appropriate Federal sources. We must do the kinds of things you have mentioned in terms of making this process work as quickly and as well as possible so all the actors know exactly what they are supposed to do.

After we have designed that part of our relationship, then we can go and put some dollars into it. When we are always talking dollar cuts, it doesn't make any policy sense to anybody.

I am just desperate to know that, within your agency, there is not just cognizance for defining Federalism in terms of dumping the responsibility on States——

Mrs. GORSUCH. Certainly not.

Senator DURENBERGER [continuing]. But also a sense of the important relationships and the important responsibilities which we have at the national level and that the States and others can best implement them.

Mrs. GORSUCH. I appreciate those words of wisdom. Certainly, on my part, there is a very real consciousness of the appropriate Federal role. I think the challenge to the Agency is in defining what that role is, and then, unlike the past, redefine what the Federal role is once delegation has taken place.

Many, many of the complaints which have come to my attention are that the Federal Government develops a program on paper; delegates it to the State; and then continues to follow the State decisionmakers and implementors around, remaining in each decision and in every implementation decision. That is certainly the case.

This year, when the Idaho State Legislature said, "We refuse to fund any State-aided program," the net effect was to turn it back over to the Federal Government to run. The reason for their decision was very simply that they were looking at their budgets as well. They said, "Why should we have the duality of the State pretending that they are implementing an aid program when the Federal Government is coming right behind them, making every decision again?"

Our real challenge is redefining what the Federal role is once implementation has taken place. Many, many of our programs have been implemented by the State governments which are ready, willing, and able to see to their proper functioning. What they do resent is duplication of effort and being second-guessed. That will, I hope, also be reflected in what we hope will be a rational budget. I will tell you that I feel strongly that we are operating on an open agenda, which is to do a better job with fewer resources. I think that that agenda can be justified, in fact, through every component of our budget.

Senator DURENBERGER. Good.

Thank you very much.

Mrs. GORSUCH. Thank you, Senator.

[Responses to written questions submitted by Senator Sasser follow:]

RESPONSES TO WRITTEN QUESTIONS SUBMITTED BY SENATOR SASSER

Question 1. There are 35 officially identified hazardous waste sites in Tennessee, half of which have yet to be officially investigated. This investigation, the actual on-site visit for sampling and surveying, is necessary for any scientific work to begin on any waste site. With this in mind the Congress augmented budgeted resources for this effort last year. That work, according to a March 1981 report prepared by General Accounting Office, has fallen way behind schedule. What is the problem here?

Answer. We have made significant progress since the March 1981 GAO Report was published. For example, the 35 "old dumps" published in Tennessee's Safe Growth Plan (January, 1981) are being dealt with in the following manner:

13 sites received detailed investigations and currently are under various stages of monitoring, clean-up, and waste removal.

5 sites are undergoing inspections by Tennessee Department of Health contractors.

3 sites, at larger industrial installations, are being inspected using RCRA program resources.

14 sites are scheduled for investigations coordinated by EPA and the Tennessee Department of Health over the next few months.

In addition, much EPA and State activity has taken place outside of these 35 sites. More than 480 potential hazardous waste sites in Tennessee have been listed in our Site Tracking System. These were primarily identified as a result of citizen complaints or State and EPA field surveys. Also, the mandatory notification of facilities conducted in 1981 under CERCLA identified approximately 150 sites in the State. We are on an ambitious schedule to examine these facilities on a priority basis and have already screened over 200 of them. We are working closely with the State in exchanging site information and coordinating the conduct of these in-house assessments and follow-on inspections. The site inventories are also being used to select candidates for the National Priority List.

Question 2. This summer, the EPA deferred financial responsibility regulations and withdrew the uniform minimum third party liability insurance requirements for site management. What do you expect the effect will be of the patchwork of State actions that may require such liability insurance of waste generators and handlers?

Answer. EPA is just proposing to withdraw the third party liability insurance requirements. The States and the insurance industry will undoubtedly comment on this proposal. We expect them to comment on whether such a patchwork will result and, if so, its consequences. We will carefully weigh this issue in our final decision.

Even if we do decide to later withdraw these requirements there are other alternatives that could prevent such a patchwork from arising. This includes, for example, voluntary actions by the States to develop a model policy through their State association (ASTSWMO) or a model policy developed by the insurers themselves.

Question 3. Given the suspension of insurance provisions, and the deferral of regulations applying to incineration and surface storage impoundment of wastes in existing facilities, how can EPA claim that it is complying with its charge to protect the public health and environment? If you cannot promulgate basic regulations necessary to prevent the existing active disposal sites from degenerating into priority problems which threaten the public health and environment, isn't there work to be done before the end of this year to rectify a disastrous situation?

Answer. We have already put out many of the basic regulations. Our 265 "Interim Status Standards" include many important site management standards. For example, existing requirements for self-inspection, groundwater monitoring, and closure/post-closure care should alleviate the threat of presently-operating sites degenerating into priority problems. Our generator and transporter standards are also in place. They require generators to safely manage their wastes and transporters to safely handle all wastes when they are moved off-site. The manifest system will track each waste shipment to assure that it reaches its proper destination.

We believe this already-established system makes a disastrous situation highly unlikely. Also, we are on schedule to complete as fast as possible the site management standards for land disposal that are still outstanding. If we decide to revise site management standards for existing incinerators and storage surface impoundments, we will complete this work as quickly as caution dictates.

Question 4. Senator Durenberger and I recently had an amendment attached to the pending regulatory reform bill (S. 1080) which amends the Federal Advisory Committee Act (FACA) which should permit more State and local consultation on a wide variety of issues, including hazardous waste disposal. I would appreciate your assessment of this amendment which is attached and your views as to whether this amendment would alleviate the consultation problems that you allude to in your testimony.

AMENDMENT TO S. 1080—EXEMPTION FROM FACA REQUIREMENTS FOR ELECTED OFFICIALS OF STATE AND LOCAL GOVERNMENTS AND THEIR OFFICIAL REPRESENTATIVES

To section 3 of the Federal Advisory Committee Act, Public Law 92–463, as amended by Public Law 94–409 (5 U.S.C. Appendix I, Section 552).

Section 3 of the Federal Advisory Committee Act is hereby amended by adding a new (iii) of subsection 3(c) as follows:

"(iii) any committee which is composed wholly of fulltime officers or employees of the federal government, or elected officials of state or local governments when acting in their official capacities or their representatives or representatives of their national organizations."

Answer. Your amendment to the pending regulatory reform bill (S. 1080) would exclude those workgroups that are made up of only local and Federal officials from the extensive review and procedural requirements of FACA. This should enable a higher level of consultation with these local officials. It is clearly justified because they are on the frontlines in the implementation of Federally-mandated environmental programs, and the transfer of local technical experience into these programs is essential to successful, rational regulation. In a large part due to the requirements of FACA, those State officials who will eventually be responsible for implementing equivalent State hazardous waste programs cannot presently be included in the fast-moving development of these regulations at the Federal level. I believe the amendment you propose would be a proper step towards encouraging more consultation with these officials.

Senator DURENBERGER. We are fortunate today to have, as witnesses, three outstanding people who can discuss their experiences with State implementation. First is Norman Nosenchuck, director of solid and hazardous waste programs for the New York State Department of Environmental Conservation. He has asked to appear before the subcommittee for two reasons: One, he is the president of the Association of State and Territorial Solid Waste Management Officials, which is the voice of hazardous waste management programs; and second, because New York State, at present, does not have an EPA-authorized program.

Our second panelist, Thomas Eichler, is the director of environmental control for the Delaware Department of Natural Resources and Environmental Control. The subcommittee is interested in hearing his perspective of the RCRA program since the State of Delaware has received EPA interim authorization.

Our third panelist is Ruthann McQuade, assistant attorney general for the State of West Virginia. Miss McQuade will present a State review of enforcement under RCRA.

Are all the panelists here?

Unless you have decided to go in some other order, we will go in the order of introduction. With your prior endorsement, Norman, you will make the first presentation.

TESTIMONY OF NORMAN H. NOSENCHUCK, DIRECTOR, SOLID AND HAZARDOUS WASTE PROGRAMS, NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND PRESIDENT OF THE ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS; THOMAS P. EICHLER, DIRECTOR, ENVIRONMENTAL CONTROL, DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL; AND RUTHANN McQUADE, ASSISTANT ATTORNEY GENERAL, STATE OF WEST VIRGINIA

Mr. NOSENCHUCK. Good morning, Mr. Chairman and subcommittee members.

I am Norman H. Nosenchuck, director of the solid waste program for the New York State Department of Environmental Conservation. The department of environmental conservation is charged with implementation of all program and enforcement activities related to solid and hazardous waste in fulfilling the commitment for the cooperative agreement with the Environmental Protection Agency under section 3006 of the Resource Conservation and Recovery Act (RCRA).

With your permission, Mr. Chairman, I would like to enter my written statement in the record and read excerpts at this time.

Senator DURENBERGER. All of your statements will be made a part of the record following the oral testimony. You may all feel free to summarize your statements.

Mr. NOSENCHUCK. Thank you, Mr. Chairman.

I am here today to testify as president of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and on behalf of the National Governors' Association on matters related to State implementation of RCRA and the Federal-State partnership. In my testimony, I will address the following issues: The need for the Federal-State environmental partnership; State-industry cooperation; congressional guidance on implementation of RCRA and concurrently the Comprehensive Emergency Response Compensation and Liability Act, commonly known as "Superfund;" and identification of State technical assistance needs.

RCRA was enacted in 1976 to formulate a national uniform solid waste management program to protect the human health and the environment, and to conserve valuable materials and energy. The act—as intended by Congress—was to upgrade existing State programs as quickly as possible and develop new programs, in States lacking these initiatives, so that they exhibited "substantial equivalency" to the Federal program and showed consistency from State to State.

EPA was made the lead agency to promulgate regulations, manage the administrative and fiscal requirements specified in RCRA, and provide technical assistance to the regulated community as well as the regulators. This was to be accomplished in consultation with the States for a number of reasons:

One, because of previous solid waste management experience in State governments, discussion with States would substantially hasten program development;

Two, concerns unique to a particular State require a flexible regulatory system which exhibits the minimal Federal guidelines Congress intended;

Three, augmenting Federal efforts with State expertise would expand the base of technical knowledge and assist the U.S. Environmental Protection Agency in developing a sound and defensible technical public policy; and

Four, this consultation process would enhance the Federal-State partnership.

These goals were not met under the previous administration. Deadlines for proposing regulations were missed. The States were listened to but not heard, and a viable Federal-State partnership never flourished.

The States are well equipped to support and to continue the consultative process with EPA under subtitle C of RCRA for hazardous waste management and concurrently in the implementation of the Superfund legislation. The pooling of available State expertise with the expertise at the Federal level would dramatically expand the base of technical knowledge and assist the EPA in developing a sound and defensible national public policy and technical requirements.

The State consultative process provides a necessary channel of communication not only between the States and Federal governmental agencies, but also among the States. The latter is essential to not only promoting the Federal-State partnership, but assuring the implementation of equivalent and consistent State programs on a national basis.

If a State can demonstrate that its program is substantially equivalent to the Federal program, EPA is to authorize, on an interim basis, State operation of a hazardous waste program. Interpretation became a question of a State program being identical to, rather than equivalent to, the Federal program. EPA headquarters, in the past, has not been able to judge substantial equivalency and so has not been able to direct the Federal regions on the definition of the term. There has resulted a considerable disparity between regions as to which State programs are judged equivalent. While we believe this will improve with the new regional administrators, I must relay to you the problems we have previously had in EPA region II, which includes New York, New Jersey, Puerto Rico, and the Virgin Islands.

There are 27 States that have received phase I interim authorization for their hazardous waste programs. No States in regions II and V have yet received phase I interim authorization. Puerto Rico's attorney general was told by the regional counsel in EPA region II that his interpretation of Puerto Rico law was incorrect. The report that is attached to your copy of my statement details Puerto Rico's experience.[1]

The new administration, however, seems much more open to States' needs and concerns. The association has met with top EPA officials, including Mrs. Gorsuch, on several occasions. We believe that a viable Federal-State partnership is developing from these continuing dialogs. Moreover, in terms of interim authorization, we feel confident that Mrs. Gorsuch and other EPA officials will recognize the fact that substantial equivalency, as intended by Congress, refers to program equivalency so that the various State waste management programs can experience a smooth transition to meet Federal guidelines.

The need to provide technical assistance to the private sector in assuring compliance with Federal hazardous waste management regulatory requirements is a critical unmet need. The association is currently cooperating with the American Society for Testing and Materials (ASTM) to define potential technical options for determining levels of control for hazardous waste. Last week, the chairman of ASTM Committee D-34 on Waste Disposal formally expressed the willingness of that committee and its membership to assist our association in addressing these technical options. This shared effort is indicative of the potential cooperation between governmental organizations and the private sector and will, in the near term, provide technical assistance to those entities responsible for all facets of hazardous waste management.

The States are severely concerned about past and current budget cuts. Currently, the States are continuing to perform their lead role in nonhazardous solid waste management without Federal financial and technical assistance. At a time when EPA is moving toward increasing the States' responsibilities in hazardous waste program implementation, a reduction in State grants for these activities and their technical and training needs would severely constrain program activities.

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[1] Report retained in subcommittee files.

Current Federal funding of the hazardous waste programs is a substantial $41.7 million, but really amounts only to subsistence funding, given the wide range of activities the program must cover.

Increased budget cuts in research and development will delay formulation of a sound and defensible technical policy. It will hinder enforcement actions by the regulators, as well as program initiatives for establishment criteria for facilities or remedial action activities under Superfund.

The new administration, moreover, is severely constrained by the President's program to reduce Federal spending. Even though fiscal year 1983 funding levels for State grants are unknown at present, States are well aware of these dictates. We are pleased that Mrs. Gorsuch is defending her budget against the rumored cuts by the Office of Management and Budget. States do not expect funding indefinitely. However, we must know not only that funds will be available at a reasonable level for the next 4 or 5 years, but also the exact amounts which will be available each year to allow the States time to secure and phase in alternative funding sources.

The delay in meeting the RCRA statutory deadlines, the current reduction in Federal financial assistance to the States, the lack of Federal financial assistance to local governmental entities, and the passage of the Superfund legislation have created an array of policy questions on the priorities for implementation programs at the State level. Furthermore, with a legislative history not fully documented for RCRA, we would certainly welcome congressional guidance in the discussion of these issues and in the determination of the priorities in these programmatic areas.

The association, under a grant from the Department of Commerce, is examining various econometric models to evaluate the economic feasibility of the reuse and recovery of hazardous wastes—for instance, spent solvents—and to evaluate the economic feasibility of resource recovery as a solid waste disposal option. A copy of that report will be made available to the subcommittee.[1]

A recent study conducted by the association for the National Bureau of Standards concerning State measurement needs and their capabilities to meet the technical requirements of RCRA has conclusively shown that:

One, State programs are not yet consistent among themselves;

Two, the lack of available measurement tools for sampling and analysis by EPA is severely impeding State-to-State consistency, timely program implementation, enforcement actions, and worker protection and safety; and

Three, technical assistance, training and funding to meet these needs is inadequate or not available.

As the Federal rules for air, water, and waste management form the basis of State environmental programs, we believe that State officials must be intimately involved in preparing these rules. In that connection, we are concerned about the fact that the States somehow should be involved with the Federal Government in developing their rules and regulations so they can be implemented.

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[1] See p. 150 for an excerpt of the report. The balance of the report may be found in the subcommittee files.

I appreciate the opportunity to testify before you today. I will be happy to answer any questions that you might have, Senator.

Senator **Durenberger**. Thank you very much.

Mr. Eichler?

Mr. **Eichler**. Thank you, Senator.

I too will have a statement, but I will not read it verbatim. I am Tom Eichler, director of the Delaware Division of Environmental Control. I appreciate the opportunity to share with you Delaware's experience in implementing subtitle C of RCRA.

Delaware has long maintained a progressive policy with regard to providing environmental quality programs at the State level. With the advent of major congressional actions in the 1970's—in one case, supplementing our authority; and, in another case, preempting it—we follow a conscious policy to seek all major delegations available under the legislation.

In that area, we have had the NPDES program for water quality since 1974. We have had program delegations for air quality. We have had an approved coastal zone management program for the last 2 years. We are currently moving through the second and third phases of construction grant program delegation as well as what we are doing under RCRA. We are doing this partly because we believe the State can do a better job in the field, and also because we feel that it is more efficient and a better service for our State to operate these programs from the level of the State, rather than from the two levels of State and Federal Government.

Our approach to hazardous waste has been consistent with this policy. In fact, in 1979, Governor du Pont wrote to EPA urging timely promulgation of subtitle C regulations because the continued delay was also slowing Delaware's hazardous waste program agreed to in our 1979 State-EPA agreement. In his letter the Governor pointed out that "Delaware is very much part of an industrial network which, indeed, is international in scope. Without a national framework in EPA regulations for our program to function under, we cannot hope to achieve a system which is even compatible with our neighboring States."

As a practical matter the State of Delaware was very reluctant to move out ahead with its own program. This was partly because of the confusion and lost time which would inevitably result when we would have had to retool upon inevitable passage of Federal regulations, and partly because we could not afford to independently develop our own standards and criteria.

With passage of the May 19, 1980, RCRA regulations, though, the State did move very quickly ahead. In our 1980 State-EPA agreement, we made a breakdown of responsibilities between ourselves and EPA. Generally speaking, we said, "EPA, you be responsible for the remedial side of hazardous waste and for Superfund activities. You have that expertise and that money. We will be responsible for the preventive side of hazardous waste, namely subtitle C."

We felt that this was a long-term program which would be there for a long time and it was new. We would move into that area and be good at it. We expect the regional office of EPA to be good at the remedial side of it. That has basically been the set of relationships we have attempted to develop since then.

We did move very quickly with the regulations. In May, the Governor introduced program legislation, both for hazardous waste and for pretreatment. In June, the general assembly passed the legislation unanimously—both houses passed the legislation. There was some discussion at that time of whether or not we should wait another year to let some of the problems sift out at the Federal level. However, I think the feeling was that we would be better off to move into it initially and learn along with our industries and along with EPA's regional office, rather than try to play catch-up.

In July, the Governor signed a bill which started the clock running on the effective dates. In August, we conducted industry workshops, and also proposed our regulations. In September, we held a hearing on those regulations. In October, we adopted them. On November 19 of last year, at the opening day of the nationwide manifest system, we began to operate the manifest in Delaware for EPA under a short-term cooperative arrangement. We did not, at that time, have the full delegation because the package involvement was so large and cumbersome. There was no way we could get all of it down that quickly. However, we did negotiate a short-term arrangement and began implementing it. In January EPA held a hearing, and in February we were the first State in region III to achieve the authorization. In May we began initial facility inspections. In September of this year, we submitted a draft cooperative agreement for phase II.

Since that time, we have been operating our cradle-to-grave manifest system. One hundred sixty-eight generators identified themselves; 51 transporters and 52 facilities. We are now receiving about 100 manifests a month and operating our program level at $402,000, of which $257,000 is supplied through our RCRA grant.

We intend to move into phase II interim authorization in 1 year, about a year from now, depending on a number of matters. First of all is the accomplishment of making phase I routine. We want to get all the bugs out of it and do a very good job running that part of it. We also have an interim agreement with EPA between now and then to begin inspection of facilities for the permitting processing. We will do this cooperatively with EPA and learn how to run the system. The other matter is the availability of funding.

In phase II, we estimate we currently have 11 man-years of activity under phase I, and we think we need another 8 man-years of phase II in addition to the 11 man-years we have. The ability to move into it is also contingent upon a funding situation being worked out there. I would like to offer a few observations with regard to our experience.

Last week. we observed the first full year of running the program. We believe that EPA's region III staff has done everything possible to make the program go and to assist us in the delegation. They have set up a team to work with us, including legal staff and program staff, to make this possible. However, we find, within the regional offices, that while we are dealing with one team under subtitle C, there are other aspects not as well coordinated.

The regional office is also dealing with Superfund, with uncontrolled sites and with surface impoundments. These all relate to hazardous waste. These different components of EPA all come through the same people at our State level. We have to divide our time among these various activities and to set some priorities among them. This really has not been sufficiently coordinated at the regional level. It causes us some problems at this point.

On the matter of substantial equivalence, we have found that, thus far, it really means that Delaware's laws must essentially be identical to EPA's, except where ours exceeds EPA's. For example, before we submitted the Governor's bill—which I mentioned earlier—EPA reviewed our legislation and approved it as being consistent. Subsequently, after it was passed, signed and submitted again as part of our delegation package, EPA determined that there was an inconsistency. It required, as a condition of the delegation, that we get the law amended in spite of our attorney general's opinion that it wasn't necessary, that we were able to be substantially equivalent without amending the law. This year I had to go back to the legislature, to get a relatively minor amendment passed to make up that difference.

I think, too, that the authorization package itself has been overly cumbersome and a bit redundant in some of its aspects. Both of these things we wrote off as general experience that we get when a new program is started up and a transfer is made.

Concerning regulations and program development, we have found that there have been so many changes in the first year of the program under EPA's May 19, 1980, regulations. Next month we are going to go to a hearing on 57 pages of amendments at the State level. In some cases, we have aspects which are more stringent than EPA's. For example, the turnaround time on our manifest is shorter. We are also increasing some facility standards to be the same as Delaware's solid waste requirements for protection of ground water.

We have found that EPA's regulation revisions have affected our industries in such areas as disposal of mining wastes and paint sludges, definition of empty containers and existing facilities. These have affected our chemical and auto-producing industries. In some cases, these have meant a significant contribution of our staff's and industries' time to work on problems which, subsequently, were taken care of by eliminating certain kinds of wastes. Again, I think this is related to a start-up situation which is unfortunate but, perhaps, not completely avoidable.

In the coordination with other programs, we have worked very extensively with other States in our region. We participated in the Northeast Hazardous Waste Committee, which consists of 11 States. It has an LEAA grant to work on enforcement issues. We have found that, for a number of reasons—including the development of a manifest system common to our region—we have had a great deal of State leadership provided among the States to resolve issues and make things work better. While some of this, I think, was a result of insufficient national leadership, a lot of it has been a very healthy development. I look forward to its continuing.

On the matter of financial resources, I am very concerned, for example, that within RCRA subtitle D the funds for solid waste are being curtailed at this point on EPA funding. The debate is that these are matters for State and local concerns. If that is the case, however, I have to go back to my State legislature now and make a request for

State funds. At the same time, if I don't get additional RCRA funds in the future, they will be competing with the RCRA subtitle D program.

We are in a very big jam. On the one hand, we are being told States should run a hazardous waste program because it is in their own interest. On the other hand, we are being told to run the solid waste program because it is a State responsibility. We have to go back with both these needs and ask for money for both of these programs. It is hard to take both kinds of priorities and push them through that very tight funnel of a State budgetary process.

I think these are some areas with which we really need to come to grips. For example, I hope that in the future any additional State money we have for solid waste could be used to meet some of the matching requirements for hazardous wastes under subtitle C. These kinds of flexibilities aren't currently there. I am hoping we could develop some of those.

I would say, in conclusion, that it has been a very important year for us. It has been demanding. I think it has been reasonably successful. We look forward to continuing the program. We look forward to going into phase II. However, our ability to do that will be a function of funding and the ability of our organization to sustain the growing pains which come with a very complicated program.

In that area, I would just mention one more thing. I think it is important that EPA maintain a strong program of technical assistance and training. I think that it is one of the areas where EPA can be very effective. It is going to be very difficult for States to develop all the training that they need. Certainly, the safety of our field staff and our lab people is related to their training and ability to protect themselves in the areas of hazardous wastes. I think EPA can provide these kinds of things very effectively, certainly much more so than the States can.

Thank you.

Senator DURENBERGER. Thank you very much.

Ms. McQuade?

Ms. McQUADE. My name is Ruthann McQuade. I am an assistant attorney general for the State of West Virginia. I am here today on behalf of Chauncey H. Browning, the attorney general for the State of West Virginia. The attorney general has a vital interest in the subject before this subcommittee today. He is delighted to have the opportunity to present his views before you.

Before describing any of the specific problems that West Virginia has had with the State's implementation of the Federal RCRA program, I would like to describe basically the makeup of West Virginia's hazardous waste program. Unlike many States, we do not have a State EPA. Rather, we have a constellation of no less than seven State agencies, including the air pollution control commission, oil and gas commission, the department of highways, the department of health, the public service commission, and the department of natural resources. All of these agencies are involved in the implementation of the hazardous waste program. When I later discuss problems, I would ask you to keep in mind the number of our State agencies; because to the extent we have experienced problems working with EPA, it is compounded.

The attorney general's office has devoted more resources to the development and implementation of the State's hazardous waste management program than any other comparable Federal-State environmental program. We became involved, at its inception, when our legislature asked us to draft legislation which would enable the State to assume primacy for RCRA.

EPA was very helpful during this time in advising us on the requirements for enabling legislation. Our legislation was passed in April 1981. Unfortunately, too late to qualify for interim authorization. So we are now operating under a cooperative arrangement with 27 other States. I understand that EPA is considering extending the date that we can apply for interim authorization. For obvious reasons, this would be extremely beneficial to West Virginia and the other States without interim authorization.

The act that was passed in April 1981 requires several State agencies to promulgate regulations in their various areas of jurisdiction and expertise. The legislature also directed these agencies to promulgate such rules consistent with those promulgated by the EPA. Our program was to be equivalent and consistent. At the time this legislation was being considered, I was personally involved in both advising members of the legislature and conferring with the agencies.

We reluctantly agreed to the consistency language only because we had reviewed EPA's regulatory program and felt it was adequate to protect the health of our citizens and the environment of our State. However, the nightmares caused in our State program by this particular language—because of EPA's continual changing, suspending, amending, reviewing, and eliminating rules and regulations—are unbelievable.

The various State agencies charged with rulemaking proposed regulations in July this year and scheduled public hearings. Prior to the closure of this public comment period, EPA had made substantial changes. For example, one of the most critical ones lies in the area of financial responsibility regulations. On January 12, 1979, EPA promulgated financial responsibility regulations. The regulations promulgated on that date are now in jeopardy of being significantly weakened or entirely eliminated. This leaves our State agencies in extremely difficult positions. Basically, we have three alternatives now.

One, the agencies can go back to the drawing board and devise their own financial responsibility regulations. However, it is virtually certain that these regulations would then be challenged in court. Or, we could leave in force the proposed financial responsibility regulations. Industry would and has argued that the consistency language would prevent us from doing this. Finally, we can avoid industry challenges altogether by imposing no financial responsibility requirements whatsoever. This last alternative is unpalatable for two reasons. First, it is our position that the financial responsibility requirements are essential if the public is to have any confidence in our program. Second, even if our position was different, the failure to regulate in this area would certainly provoke litigation by concerned citizens.

Another example of EPA's action having a detrimental affect on our State program is its proposal on October 20, 1981, to suspend the effective date of interim final rules on standards for existing incinerators and the storage impoundments. What is happening now is that those persons commenting are suggesting that we also suspend our program until EPA makes a final decision.

These examples illustrate graphically the untenable position in which EPA has placed our State agencies. Essentially, the agencies were operating under the assumption that, when they supported the consistency language, the Federal regulatory program in existence at the time the statute was passed would remain substantially the same. However, much to their dismay, they now find the Federal program is being completely reshaped. Under the provisions in the State statute, they may likely be required to make the same changes that the EPA has already made or contemplates making.

Consequently, as a direct result of EPA's actions, the State agencies responsible for rulemaking will be unable to meet the statutory deadline. Furthermore, there is a growing concern among the State agencies that they would be adopting a less than adequate program—a program that would not protect the public health and environment if they are forced to adopt EPA's changes.

I have been addressing the impact that EPA's actions have had on our State hazardous waste program. However, EPA's failure to act has had an equally devastating effect on other programs. Most notably is their failure to promulgate regulations for land disposal facilities. This inaction leaves essentially unregulated, large numbers of improperly designed landfills and surface impoundments—the very facilities that present the greatest hazard to human health.

Although our State agencies would like to promulgate their own sets of regulations to fill the gaps, the consistency language adopted in our State may—or so industry argues—prevent them from doing so. Furthermore, even if statutory authority existed to develop and support such standards, it is unrealistic to expect the State to have either the resources or the expertise to independently develop such regulations without any guidance from EPA.

I don't want to give the impression that the relations between the State and EPA are entirely negative. In fact, in the area of enforcement, fortunately, EPA and the State agencies—pursuant to the cooperative arrangement—have been very successful in coordinating their enforcement actions and avoiding the resulting duplication of resources. In fact, when we have more authority under a particular section of our statute, we attempt to complement the Federal enforcement actions where our State has broader enforcement authority.

However, while the State has benefited tremendously from the cooperation with EPA on enforcement actions, the actual number of cases being filed by the attorney general's office has been dramatically curtailed due primarily to the drain of our resources resulting from EPA's continual changes in its regulations. Monitoring EPA's rulemaking changes requires our daily attention. If this continues, it will cripple our enforcement efforts. Given this, one can only wonder where we will find the resources to handle the additional enforcement responsibilities EPA now proposes to shift to the States. Currently, I have several enforcement actions that can be brought for either violation of interim status or for violation of other sections of our State statute. However, we simply do not have the time needed for these enforcement cases because of EPA's actions.

As far as financial incentives for development and implementation of the program, West Virginia has been more than fortunate in receiving an amount of Federal grant money which is adequate for its program. However, if the Federal funding does not continue at substantially the same level, then the State will be in a difficult situation.

In anticipation of funding problems, we tried last year to incorporate a funding mechanism within the act and were successful. We have created a hazardous waste management fund which derives its money from permit application fees and fines and penalties from the enforcement actions brought under the act. However, the amount that this will contribute is only 10 to 20 percent. Consequently, in the event Federal funds are cut, the State will be left with seeking close to $800,000 from the legislature in general revenue funds. Needless to say, with the existing economic situation, it is very doubtful that such funding will be forthcoming. Consequently, we are already preparing draft legislation for this legislative session for another fund which will derive its moneys from a tax on disposers of hazardous waste. This, of course, is only in the preliminary stages. We have no feeling for the receptiveness by our State legislators.

Before I conclude my presentation, I would like to make one additional comment on an issue in which the subcommittee has expressed an interest. That is, the general principle of Federal-State regulation that allows the States to set more stringent standards where necessary and appropriate. Section 3009 of RCRA explicitly recognizes this. We must have the ability to tailor our regulations to our particular needs.

One example I can give you of this is our proposed location standards which say that the disposal facilities must not be located within 1,000 feet of a subsurface mining area. Obviously, mining is an area in which our State has considerable expertise and experience. EPA did not develop a location standard with respect to subsurface mining areas, thus if we were not free to impose more stringent standards, we would be prevented from setting a subsurface mining area standard.

In conclusion, let me say that I have tried to offer some constructive criticism from the perspective of a State attorney general's office on what I perceive are some of the major difficulties our State is experiencing in implementing a Federal program. I trust these comments will be useful to you in formulating your final recommendations.

Senator DURENBERGER. I thank you all very much.

I appreciate the thoroughness of the testimony and the reality of the application and its administration to our concerns for the Federal-State relations.

Let me start with a financial question to all of you.

I will make it a two-part question. One is, if you take a look, as we did with the Director of EPA, at the related environmental programs—clean air, waste water management, solid waste, hazardous waste—what advice would you give to those of us who have to make budgetary decisions this year and next year as to where we can best use our money in the area of implementing these various acts, and particularly this act, by looking at all of them?

The second part was addressed by a couple of you. That is the business of alternative funding—the fees, the taxes, whatever—at which we should be looking as soon as possible.

Mr. **Nosenchuck.** Mr. Chairman, if I might respond first. We are totally familiar with the realities of the fiscal situation nationally and in the individual States.

However, I do believe that a substantial cut right now in the $41.7 million which EPA is discussing for RCRA subtitle C would really be disastrous. I do believe that the States, at some point in time, are going to have to pick up 100 cents on the dollar to fund the programs. There is no question about that. However, I believe enough leadtime is necessary to phase the Federal funding out and to phase the State funding in.

In March 1980 I prepared a position paper for the National Governors' Association on "Future Funding of State Solid Waste Programs Under the Resource Conservation and Recovery Act." Mr. Chairman, I am submitting a copy of this paper for the record.[1]

I contacted most of the States in the country. We discussed the question of using fee systems to provide continued funding. At that time we found out it was a major problem because of strong home rule philosophies that prevail throughout the United States.

However, right now, in New York State, we are considering and will be discussing throughout the State this upcoming year the question of user fees to provide continued funding for solid and hazardous waste management programs. We also have permit fees right now, which really don't support the cost of administering the permits. We will be re-evaluating our permit fees also.

I do believe, however, that the Federal Government will need to support State hazardous waste management programs over about a 4 to 5 year period. Furthermore, I do believe that the States are entitled to know how much money they will get every year over this 4 to 5 year period so they can figure in what they are going to have to do about securing and phasing in alternative funding sources.

In New York State, for instance, to run a hazardous waste management program the way RCRA calls for it to be run, we are going to have to increase our funding substantially. When I say substantially, I can see an enforcement and regulatory hazardous waste management program in New York that does everything RCRA calls for under subtitle C costing about $10 to $12 million a year. That is a big program. Where are we going to get the $10 to $12 million? Where are we going to get the people to hire, on a timely basis, for that particular program?

Therefore, I do believe that there is a need for some sort of statement from the Federal Government committing funds to State programs over a 4 to 5 year period. A State should be told: "Your State will get this much this year, so much each year for succeeding years, and you get zero dollars after that point in time." Leave it up to the State to bring the alternative funds into the program.

I believe user fees, on the disposers, along with permit fees are viable alternatives, but it takes time to get these in place.

Mr. **Eichler.** I would like to amplify a little bit on some of the things I said earlier. I think it is important to point out that we are already being faced with other reductions in programs which EPA wants. For example, our program had the coastal zone program reduced 50 percent this year and 50 percent next year, and maybe nothing out after that. Title III of the Water Resources Act provided funds for water resource planning and allocation which is now eliminated. We are facing reductions like these.

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[1] Excerpts from this paper will be found on p. 115. Excerpts from "State Measurement Needs Study—Final Report," will be found on p. 150. Many more reports and studies submitted by Mr. Nosenchuck may be found in the subcommittee files.

Subtitle D for solid waste has been eliminated because of thinking, at the national level, that those are things which States ought to be doing for themselves.

As I said earlier, when I go back to my legislature, and say, "I need some solid waste money," they will ask, "What is the alternative?" I will answer, "There is no alternative. Either we get State money or we don't run the program." However, when I go back and say, "We need hazardous waste money because EPA won't fund it," they will ask, "What are the alternatives?" Then I will say, "If we don't do it, EPA will."

This is true in other areas. If I ask for money for water quality, to run the septic system approval permit program at the State level, they say OK. But if I say regarding NPDES permits, "If we don't do it, EPA will do it," it is a different matter.

I think that there is great efficiency in having the States run these programs. I also think they bring some baggage with them. That is, there are burdens imposed beyond the price of the State running the program to be consistent with its Federal policy, and so on. I think there should be a national interest in maintaining—certainly for these core environmental programs of air, water and hazardous wastes—some Federal money to keep these States interested and participating in the national fabric of the program.

Also, there is no question in my mind that we will be initially moving towards fees. It should be more in the area of an initiation fee, or fee for having applied for something, rather than trying to recapture the full cost.

There is no question in my mind that the U.S. Internal Revenue Service and the State treasury department would be much more effective at collecting revenue than our environmental agencies will ever be. With all the things we have to contend with these days, the amount of effort in trying to recapture the cost of our activities and to do the accounting—in terms of the user fees to get back the full price and charge it back to the applicant—would be an enormous undertaking. This would be aside from the enormous complexity of the technical programs we are running now. That burden, coupled with some of the burdens of the engineering requirements we already have, would almost overwhelm us. It is a very great concern that we have.

Ms. **McQuade.** I would elaborate on what they have said. I am not optimistic that the State would be able to fund a substantial portion of our program within the next 2 to 3 years. Our hazardous waste management fund will need time to get underway because we won't even begin issuing permits until January, February, or March of this year. The directors of these various programs have told me very explicitly that, if they don't have sufficient funding, they simply don't want to run the program. They feel it is dishonest, on one hand, to say they are running a program without sufficient funding. So it is very critical, at least for several years, that the Federal funding continue.

Senator **Durenberger.** One of the problems that some of the States have is the problem we are discussing as it relates particularly to solid waste and hazardous waste siting.

I worry a lot about the folks out there who care about how these decisions are being made. In your States you may be experiencing some of the problems which we experience in Minnesota as the State goes about the decision of picking both solid waste and hazardous waste sites. There is a lot of community resistance to that notion. The idea that the State may come up without any Federal money is probably not a bad idea to some communities who can apply political pressure. However, that sort of leaves all the rest of us out there, who care about the environment and who care a great deal about implementing the decisionmaking process, without much of a voice.

Could you react to the reality of my concern for the squeeze that you get in between the siting, or the permitting process, and the funding process? For the record could you share with us how the States are currently working with county and municipal governments and with the citizens in your States in designing the permitting process?

Mr. NOSENCHUCK. Mr. Chairman, you touched a very sensitive nerve. In New York State, we have recently gone around and around with many public hearings on the question of siting a hazardous waste treatment facility. We have identified a potential shortfall capacity in New York to treat hazardous wastes of approximately, in not too many years, 400,000 tons a year. What we are trying to do is site a hazardous waste treatment facility to treat about 100,000 of those 400,000 tons. The EPA has previously stated that it is a State function and responsibility to take care of the siting issue.

As a matter of fact, the siting regulations we have developed in New York State that were subject to considerable public hearings and discussion earlier this year, I believe, will be among the first in the country. We are going before our environmental review board next month to discuss these siting regulations. I have shared these proposed regulations with the rest of the States, also.

The fact remains that we are faced with a tremendous educational situation. What I call the NIMBY philosophy, the not-in-my-backyard syndrome that prevails in the entire solid waste situation—not only for hazardous waste facilities, but also for resource recovery centers and landfills. We are talking about a situation which I think requires a tremendous educational process.

Besides the siting issue, I think that one of the first issues that we have to address is actually reducing the amount of hazardous waste which must be treated. I think industry is beginning to act responsibly to this. The fact remains that as the cost of treating and storing and disposing of the hazardous waste becomes more and more expensive, in order to comply with the Federal law, I think responsible industries are taking a look at their industrial processes, and recycling, reusing, and recovering with a view toward reducing the amount of waste that must be disposed of.

However, there still remains a need to dispose of a fair amount of hazardous waste that cannot be recycled, reused or recovered. There are only two permitted incinerators in the country right now, in Arkansas and Texas, that can handle PCB thermal destruction. I think there will be another one on line in Chicago early next year. The Northeastern part of the country needs additional hazardous waste treatment facilities. The States could use siting assistance and aid in working with the county and local governments.

We are going to back off in New York State on actual site selection at the present time. As far as selecting a site is concerned, we are going to thoroughly study it for 2 more years before we make any final determinations.

In New York, we had thought that the best solution would be to locate a site on land that would be owned by the State, and have private industry come build a hazardous waste treatment facility on that particular site. We nominated some 31 sites, and selected a particular site as the most desirable, subject to onsite geologic testing. You wouldn't believe what developed because of that. We received thousands of letters opposing the sites we suggested.

Senator DURENBERGER. Has New York explored any kind of a reward system for municipalities?

Mr. NOSENCHUCK. As a matter of fact, in the draft for proposals for prospective entrepreneurs in connection with our proposed hazardous waste treatment facility, I prepared that chapter on reward or compensation. We suggested different methods that might be considered, including direct financial assistance, and other means of assistance to a locality where the site was located. I might state that several localities did come to us and say that they would like to have a site located there. However, for one reason or another, their land just wasn't adequate, or wasn't near sufficient water for the aqueous treatment; or did not have good transportation routes.

I do believe that compensation is going to have to come into play. Some of these compensation techniques are going to have to be utilized in order to locate additional facilities.

I also believe that there should be a continuing process of educating the public. I have the Love Canal remediation responsibility in New York. One of the things that I see happening is the hysteria which sometimes develops as a result of some of the inaccurate information disseminated to the public.

Mr. EICHLER. I would just say "Amen" to everything that Norm has said.

In Delaware, we have been participating through the Delaware River Basin Commission in developing screening criteria for facilities in the Delaware Valley. This includes Pennsylvania and New Jersey. We are all developing the same kind of screening criteria for the industry that we have in common. We are taking this a step further and developing it statewide within Delaware. We are also trying to be generally compatible with our neighboring State of Maryland. We will be using these screening criteria for future applicants who want onsite facilities.

Our Delaware authority is recovering a facility for our major metropolitan area. They are trying to site a facility for the residual waste which will result from that. We know it affects a very difficult issue, just in trying to conquer that.

This also reminds me of another issue, in terms of hazardous waste facilities, which is the matter of financial liability. How the regulations will pertain to that, I think, is very key. I believe there needs to be some kind of national approach to this, rather than letting each State work it out with insurance underwriters. It is a very complex issue. We faced it in the oil spill liability law in our State. We have not come up with a good answer yet. I think there needs to be some approach to it that is basically a nationwide approach.

Ms. McQuade. We haven't reached the step of siting any facilities, given our program is not that far along. We are getting a sense of what the position is going to be like, because one of our neighboring State—Ohio—has a facility to be located across the river. The community has already started voicing their opposition.

I think, basically, the citizens of West Virginia will feel more confident if they know the funding is sufficient for our agencies to review the permit application, and the financial responsibility of funding is adequate to protect their interests during closure and post-closure. I think these kinds of things will give our citizens confidence. We are considering the introduction of siting legislation, too.

Senator Durenberger. On the whole subject of financing—Tom, you made the point about the tax code and the agencies as collectors—I imagine there is reason to look at both. You want to find the incentives, for certain, for those industries which are willing to internalize some of the costs that would otherwise be a public cost. You want to find some way to reward them for internalizing the costs which would otherwise fall on Government or on consumers via the payment of taxes or fees and so forth.

The whole issue of alternative financing to this is a broader issue. I myself applied it in my questions which related only to the alternatives of taxes on generators or disposers. There would be a tremendous opportunity to internalize these costs within responsible industries if you did it in the most appropriate way that might affect the tax code either at the State, local, or Federal level.

I thank all the panelists. There are plenty of other questions we could ask. We just don't have time this morning to get into all of them. But I, again, appreciate the time and effort that went into your presentations and your responses to my questions. Thank you all very much.

[The prepared statements of Mr. Nosenchuck, Mr. Eichler, and Ms. McQuade follow:]

TESTIMONY OF NORMAN H. NOSENCHUCK, P.E.

Good morning Mr. Chairman and Subcommittee members. I am Norman H. Nosenchuck, P.E., Director of the Solid Waste Program for the New York State Department of Environmental Conservation. The Department of Environmental Conservation is charged with implementation of all program and enforcement activities related to solid and hazardous waste in fulfilling the commitment for the Cooperative Agreement with the Environmental Protection Agency (EPA) under Section 3006 of the Resource Conservation and Recovery Act (RCRA), P.L. 94-580.

I am here today to testify as President of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and on behalf of the National Governors' Association (NGA) on matters related to State implementation of RCRA and the Federal/State partnership.

In my testimony, I will address the following issues:

- The need for the Federal/State environmental partnership;
- State/industry cooperation;
- Congressional guidance on implementation of RCRA and concurrently the Comprehensive Emergency Response Compensation and Liability Act, P.L. 96-510, commonly known as "Superfund"; and,
- Identification of State technical assistance needs.

FEDERAL/STATE PARTNERSHIP

RCRA was enacted in 1976 to formulate a national uniform solid waste management program to protect the human health and the environment and to conserve valuable materials and energy. Historically, waste management programs had been handled at the State and local level without previous Federal oversight. The Act, as intended by Congress, was to upgrade existing State programs as quickly as possible and develop new programs in States lacking these initiatives so that they exhibited "substantial equivalency" to the Federal program and showed consistency from State-to-State. EPA was made the lead agency to promulgate regulations, manage the administrative and fiscal requirements specified in RCRA, and provide technical assistance to the regulated community as well as the regulators. This was to be accomplished in consultation with the States for a number of reasons:

- Because of previous solid waste management experience in State government, discussion with States would substantially hasten program development;
- Concerns unique to a particular State require a flexible regulatory system which exhibits the minimal Federal guidelines Congress intended;
- Augmenting Federal efforts with State expertise would expand the base of technical knowledge, and assist the U.S. Environmental Protection Agency (U.S. EPA) in developing a sound and defensible technical public policy; and,
- This consultation process would enhance the Federal/State partnership.

These goals were not met under the previous Administration. Deadlines for proposing regulations were missed, the States were listened to but not heard, and a viable Federal/State partnership never flourished.

Under Subtitle C of RCRA, Congress clearly set forth a new direction. The U.S. EPA was charged as the lead Federal Agency to develop and promulgate hazardous waste management regulations. EPA purported to accomplish this effort in an expeditious manner. With the delay in the promulgation of the regulations and the judicially imposed February 1, 1982 deadline for existing hazardous waste land disposal facilities, it is imperative that the Federal/State partnership be reaffirmed in order to finalize the regulations setting forth the technical criteria for new and existing hazardous waste management facilities.

The States are well equipped to support and to continue the consultative process with EPA under Subtitle C of RCRA and concurrently in the implementation of the Superfund legislation. The State experience with waste management practices would substantially hasten Federal regulatory developments and program implementation consistent State-to-State. The pooling of available State expertise with expertise at the Federal level would dramatically expand the base of technical knowledge and assist the EPA in developing a sound and defensible national public policy and technial requirements. The State consultative process provides a necessary channel of communication not only between the States and Federal governmental agencies, but also among the States. The latter is essential to not only promoting the State/Federal partnership, but assuring the implementation of equivalent and consistent State programs on a national basis.

If a State can demonstrate that its program is "substantially equivalent" to the Federal program, EPA is to authorize, on an interim basis, State operation of a hazardous waste program. Interpretation became a question of a State program being identical to, rather than equivalent to, the Federal program. EPA headquarters, in the past, has not been able to judge substantial equivalence and so has not been able to direct the Federal regions on the definition of the term. There has resulted a considerable disparity between regions as to which State programs are judged equivalent. While we believe this will improve with the new regional administrators, I must relay to you the problems that we have previously had in EPA Region II, which includes New York, New Jersey, Puerto Rico, and the Virgin Islands. Twenty-seven States have received Phase I interim authorization for their hazardous waste programs. No States in Regions II and V have yet received Phase I interim authorization. Puerto Rico's Attorney General was told by the regional counsel in EPA Region II that his interpretation of Puerto Rico law was incorrect. The report that is attached to your copy of my testimony details Puerto Rico's experience and is an indication of the extremes to which regional offices may go without strong direction from the EPA Administrator.

The new Administration, however, seems much more open to States' needs and concerns. ASTSWMO has met with top EPA officials, including Mrs. Gorsuch, on several occasions. We believe that a viable Federal/State partnership is developing from these continuing dialogues. Moreover, in terms of interim authorization, we feel confident that Mrs. Gorsuch and other EPA officials will recognize the fact that "substantial equivalency," as intended by Congress, refers to program equivalency so that the various State waste management programs can experience a smooth transition to meet Federal quidelines.

STATE/PRIVATE SECTOR COOPERATION

The need to provide technical assistance to the private sector in assuring compliance with Federal hazardous waste management regulatory requirments is a critical unmet need. The Association is currently cooperating with the American Society for Testing and Materials (ASTM) to define potential technical options for determining levels of control for hazardous waste. On November 16, 1981, the Chairman of ASTM Committee D-34 on Waste Disposal formally expressed the willingness of that committee and its membership to assist ASTSWMO in addressing these technical options. This shared effort is indicative of the potential cooperation between governmental organizations and the private sector and will in the near term provide technical assistance to those entities responsible for all facets of hazardous waste management.

The Association has communicated with and will continue to communicate with those technical organizations representing those segments of the private sector responsible for assuring the transportation, treatment, and disposal of hazardous waste in order to explore the technical frontiers necessary for advancement of control technology, to discuss implementation issues, and to identify the technical assistance needs of public and private organizations impacted by the regulatory process.

FINANCIAL ASSISTANCE

The States are severely concerned about past and current budget cuts. Currently, the States are continuing to perform their lead role in non-hazardous solid waste management without Federal financial and technical assistance. At a time when EPA is moving toward increasing the States' responsiblity in hazardous waste program implementation, a reduction in State grants for these activities and their technical and training needs would severely constrain program activities. RCRA authorized grants to the States for resource recovery programs, solid waste programs under Subtitle D, and hazardous waste programs under Subtitle C of RCRA. Resource recovery program grants were eliminated September 30, 1980. Subtitle D grants were zeroed out for FY 82. Subtitle C grants increased from $30 million in FY 81 to $41.7 million for FY 82.

The effects of this shift were mixed. While the resource recovery and non-hazardous waste program grants were going to be phased out over the next two fiscal years anyway, the budget cuts did not allow States time to provide alternative funding for the programs. There were drastic cuts in enforcement and monitoring, and the open dump inventory, a listing of dumps that do not qualify as sanitary landfills, was halted. RCRA does not mandate the States to complete the inventory, which is part of a total program to manage hazardous wastes, but most States will eventually finish it because of the enforcement uses to which the inventory can be applied. Bringing this program back up to full speed with States funds will take years.

Current Federal funding of the hazardous waste programs is substantial ($41.7 million), but really amounts only to subsistence funding, given the wide range of activities the program must cover. Section 3012 of RCRA calls for an inventory of all current and former hazardous waste disposal sites, which was authorized at $20 million but not funded in FY 82. However, the States must perform the inventory in order to comply with regulations for permitting of existing facilities under RCRA and to fully participate in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund).

Increased budget cuts in research and development will delay formulation of a sound and defensible technical policy and hence hinder enforcement actions by the regulators as well as program initiatives for establishing criteria for facilities or remedial action activities under Superfund.

The new Administration, moreover, is severely constrained by the President's program to reduce Federal spending. Even though FY 83 funding levels for State grants are unknown at present, States are well aware of those dictates. We are pleased that Mrs. Gorsuch is defending her budget against the rumored cuts by the Office of Management and Budget (OMB). States do not expect funding indefinitely, but we must not only know that funds will be available at a reasonable level for the next four or five years, and we must know the exact amounts that will be available each year to allow the States time to secure and phase in alternative funding sources.

TESTIMONY OF NORMAN H. NOSENCHUCK, P.E.

CONGRESSIONAL GUIDANCE

The delay in meeting the RCRA statuatory deadlines, the current reduction in Federal financial assistance to the States, the lack of Federal financial assistance to local governmental entities, and the passage of the Superfund legislation have created an array of policy questions on the priorities for implementation programs at the State level. Furthermore, with a legislative history not fully documented for RCRA, we would certainly welcome Congressional guidance in the discussion of these issues and in the determination of these priorities in the programmatic areas. This guidance is particularly necessary for the discussion of the siting issue. In addition, full discussion of the economic costs and environmental benefits of the regulatory programs and technical options is required prior to the final promulgation and impelentation of both RCRA, Section 3004, 3005, potential liabilities under Superfund, and progress on the National Contingency Plan.

The Association, under a grant from the Department of Commerce (DOC), is examining various econometric models to evaluate the economic feasibility of the reuse and recovery of hazardous wastes, e.g., spent solvents, and to evaluate the economic feasibility of resource recovery as a solid waste disposal option. Such tools will provide the types of technical assistance necessary to implement cost-effective waste management programs within the States and will benefit industry, the States and the public in sustaining economic growth. A copy of the report will be made available to the committee.

IDENTIFICATION OF STATE TECHNICAL ASSISTANCE NEEDS

A recent study conducted by the Association for the National Bureau of Standards (NBS) concerning State measurement needs and their capabilities to meet the technical requirements of RCRA has conclusively shown that:

- State programs are not yet consistent among themselves;

TESTIMONY OF NORMAN H. NOSENCHUCK, P.E.

- The lack of available measurement tools for sampling and analysis by EPA is severely impeding State-to-State consistency, timely program implementation, enforcement actions, and worker protection and safety; and,
- Technical assistance, training, and funding to meet these needs is inadequate or not available.

The Association of State and Territorial Solid Waste Management Officials has thus proposed to the U.S. EPA a Federal/State project to ensure consistency from State-to-State, sustain economic growth on a regional level, promote a viable Federal/State partnership, and protect the health and the environment cost-effectively. This proposal will address various implementation strategies for Subtitle C of RCRA. The major activities of this proposed project are:

- Evaluation of current and proposed State legislation and regulations in terms of promulgated or proposed regulations under Subtitle C of RCRA;
- Recommendations of a unified technical plan and possible implementation procedures in order to achieve consistency on a national basis;
- Determination of the ease of implementing such procedures within existing State programs;
- Assessment of economic methodologies and consequences of selected regulatory implementation strategies; and,
- Identification and prioritization of needs necessary for the implementation of selected strategies to assure consistency.

These activities as well as those currently supported by grants from EPA and DOC will sustain the Federal/State partnership and provide resources for the

States to explore technical assistance programs with the private sector as well as to the local governments.

ESTABLISHMENT AS EQUAL PARTNERS

As the Federal rules for air, water and waste management form the basis of State environmental programs, we believe that State officials must be intimately involved in preparing these rules.

Three years ago the Office of Solid Waste at EPA invited us to join them in writing the rules on land disposal of hazardous wastes. Part way through the process, the Agency's Office of General Counsel cut off the joint effort on the grounds that such collaboration violated the Federal Advisory Committee Act (FACA). On its own, EPA prepared proposed rules which were published in December, 1978, and rejected by State officials and industry alike. The second set of proposed rules, which was published in February, 1981, fared no better. Now EPA is preparing a third proposal which, as previously mentioned, is under court order to be completed by February 1, 1982. EPA was willing for us to be more involved in the development of these regulations, but again we ran into the restrictions of FACA, making our role essentially the same as in the past.

We have no intention to exclude other groups from influencing the regulatory process, but we feel State officials should be allowed to work as equal partners with the Federal rulewriters.

Senator Durenberger, the amendment you have introduced to amend FACA would allow us to assume our partnership role in the rulemaking process without having to conform to the rules for an advisory group. We thank you for your support and will do all we can to marshal State support for your amendment.

Again, I appreciate the opportunity to testify before you today, and will be happy to answer any questions you may have.

Testimony by Thomas P. Eichler, Director,
Delaware Division of Environmental Control

To

Subcommittee on Intergovernmental Relations,
Committee on Governmental Affairs
United States Senate

November 24, 1981

Mr. Chairman and members of the Subcommittee on Intergovernmental Affairs, I am Thomas P. Eichler, Director of Environmental Control for the State of Delaware. Thank you for this opportunity to share with you Delaware's experience in implementing the hazardous waste management subtitle (C) of the Resource Conservation and Recovery Act (RCRA).

Delaware has long maintained a progressive policy toward providing environmental quality programs at the State level. With the passage by Congress of major environmental legislation in the 1970's this has also meant seeking important delegations from the Federal Environmental Protection Agency (EPA) where State responsibilities have either been supplemented or preempted at the Federal level. Delaware has long standing program delegations in air and water quality, along with EPA program grants to assist in carrying out these responsibilities. We are committed to maintaining an environmental quality program at the state level which can qualify for delegated programs because we believe:

- the State can do a better job of implementing regulatory programs in the field;
- it is more efficient to operate these programs from one level of government.

Our approach to hazardous waste management has been completely consistent with this policy. In fact, in December 1979 Governor du Pont wrote then EPA Administrator Costle urging timely promulgation of Subtitle C regulations as continued delay was slowing development of Delaware's hazardous waste program, as set forth in our 1979 State-EPA Agreement. In his letter the Governor pointed out that:

> "Delaware is very much part of an industrial network which, indeed, is international in scope. Without a national framework in EPA regulations for our program to function under, we cannot hope to achieve a system which is even compatible with our neighboring states."

As a practical matter Delaware was very reluctant to move out ahead of EPA's program with an independent one of its own because of the confusion and lost time which would result when the inevitable "retooling" would take place upon full establishment of the federal program. Moreover Delaware cannot independently develop, for example, criteria for hazardous waste definitions with all of the scientific inquiry and backup that effort implies.

Delaware has moved rapidly on the Subtitle C aspect of hazardous waste management as the following chronology illustrates:

- May 5, 1980, Governor du Pont introduced state hazardous waste legislation consistent with Subtitle C.
- June 30, 1980, both houses of Delaware General Assembly unanimously passed the legislation.
- July 14, 1980, the Governor signed the bill into law, starting the clock on various effective dates.
- August 1980, noticed state regulations for hearing which were essentially identical to EPA's May 19 regulations with the exception of the manifest system. Conducted workshops for industry.
- September 1980, conducted hearing on regulations.
- October 1980, adopted regulations.
- November 19, 1980, state assumed responsibility for operating the manifest system on "opening day" under a short-term cooperative arrangement with EPA.
- December 1, 1980, joint state-EPA hearing on program delegation held and initial EPA grant award made to Delaware.
- February 25, 1981, Phase I interim authorization to Delaware made by EPA, the first state in EPA's region III to receive it.
- May 1981, initial state facility inspection conducted.
- September 1981, draft cooperative arrangement for Phase II submitted to EPA.

Delaware has just completed the first year of operating the "cradle-to-grave" manifest tracking program. Under the program we have some:

- 168 generators;
- 51 transporters; and
- 52 facilities; of which:
  - 41 are storage;
  - 8 are treatment; and
  - 3 are site disposal.

We receive about 100 manifest forms per month. Our program is operated at a level of 11 man/years of staffing with a current annual budget of $402,000, of which $257,000 is supplied through our RCRA grant.

Partnership - EPA Region III staff has made every effort to assist in getting our program started and assisting us as we move ahead. This has been facilitated by EPA's assignment of a team to work with us on the Subtitle C program. However, coordination within the EPA Regional Office between the Subtitle C team and those working on other aspects of hazardous waste such as the Superfund, uncontrolled sites program, and surface impoundments, has been inadequate. This lack of EPA internal coordination has proven a burden to our small state staff who handle all aspects of the hazardous waste effort and, unlike EPA, are not compartmentalized into separate organizational niches for each program component.

Substantial Equivalence - Thus far "substantial equivalence" has been interpreted to mean Delaware's law and regulations must be essentially identical to EPA's, except where ours exceed EPA's.

For example, Delaware's 1980 hazardous waste legislation was reviewed by EPA for consistency with RCRA prior to introduction. However, after it was passed and signed into law, EPA found an objection which it had initially overlooked. Even though our supporting Delaware Attorney General's opinion indicated we would still be equivalent, EPA insisted that the law be amended to satisfy EPA's objections. The result is that we had to go back to our legislature in 1981 to obtain an amendment to the Act.

We are hopeful that EPA is beginning to realize the need to improve this situation. The latest draft RCRA State Interim Authorization Guidance Manual which we received last week at least poses an option, for a state's Attorney General to "make a convincing argument" that a states program authority for Phase II is substantially equivalent.

The authorization process itself was overly cumbersome, replete with redundant assurances from Delaware agencies, and with entirely excessive detail. In this respect the RCRA program is by no means a model for program delegation. Much valuable program startup time was consumed in dealing with such administrative details.

Regulations and Program Development

EPA's May 19, 1980, hazardous waste regulations have since undergone innumerible revisions. The corresponding state regulations which we established a year ago are now so hopelessly out of date that we will hold a hearing on December 8 to consider 57 pages of modifications and additions. In a few instances we are changing the regulations to be more strict than RCRA, including:

- shortening the time allowed for submittal of manifest forms to two (2) days for generators and five (5) days for facilities.
- increasing facility standards to be equivalent with Delaware solid waste regulatory requirements for ground water monitoring and corrective actions.

EPA revisions have affected Delaware and its industries most significantly in the area of mining wastes, paint sludges, definition of empty containers and existing facilities. These have affected our chemical and auto producing industries. In some cases significant staff and industry time has been invested only to have the regulations subsequently modified. In one case an industry has requested a variance to cover the time between the change in the Federal regulations and the subsequent necessary change in State regulations.

Coordination with other Programs

Delaware participates actively in cooperative efforts with other states including the Northeast Hazardous Waste Committee which is formed of eleven states for the purpose of exchanging information and technical assistance in the control of hazardous waste. The committee is funded by a grant from LEAA with a matching grant from each State according to its population. The committee has also conducted training seminars on investigating and regulating the transport of hazardous waste in order to correlate a unified approach by the contiguous states, and a training seminar for attorneys on legal issues involved in enforcement.

Intrastate coordination has been enhanced by the establishment of the Commission on the Transportation of Hazardous Materials as prescribed by Delaware law in 1979. The Commission brings together key members of various state and local agencies to address certain hazardous waste problems at the upper administrative level. Represented on the Commission are the Delaware Department of Transportation, the State Police, the Department of Natural Resources and Environmental Control, the Division of Emergency Planning and Operations, and the State Fire Marshal. A requirement of the Phase I program element was the enactment of a Memorandum of Understanding between the Department of Natural Resources and the State Police.

Resources

For the RCRA program to continue and mature into Phase II the funding support provided by EPA must keep pace with the program needs. The level of support is provided primarily for RCRA program development and implementation of the "cradle-to-grave" aspect of Subtitle C - one might say - the paperwork aspects of the program. However, as experience has shown us over the past year, greater support must be given to help troubleshoot site problems and find solutions to spills and other unscheduled events which are the meat and bones of hazardous waste control.

Under Phase II authorization, it is forecasted that the State will require an additional eight man/years of staffing over the next two years to administer new aspects of the program. Additional Federal support will be necessary for Phase II, particularly in view of the curtailment of Subtitle D funding for solid waste. Elimination of Subtitle D funds is forcing us to set top priority for solid waste funding in our current State budget request during a tight State fiscal period. Unfortunately, any increase in State dollars for solid waste management cannot presently be used as match for a hoped for increase in Subtitle C funding. There should be more flexibility in allowing for matching requirements to be met.

Also the Subtitle C program should be broadened to provide for reasonable eligibility of related State efforts required by other EPA hazardous waste programs such as Superfund, Uncontrolled Sites, and Surface Impoundments. Greater funding flexibility such as suggested in earlier proposals for integrated grants is appropriate.

Manifest

In spite of repeated urging EPA failed to take the obvious lead in designing an adequate manifest form. However, Delaware worked in conjunction with the nearby states of New York, New Jersey, and Pennsylvania and the New England states to establish a regionally uniform manifest form which we are using. Also to make the manifest system more effective as a tracking device the appropriate regulatory agencies were linked to the manifest paperwork process.

Such a system has been in existence in Delaware since November 19, 1980, and has worked very well with our interstate hazardous waste shipments to cooperating states. The State had also proposed to computerize such a system to provide a more efficient tracking system.

However, with the belated effort by EPA to develop and require a national form we may soon find ourselves with thousands of obsolete forms. Meantime, we are holding off on our proposed EDP system awaiting resolution of this issue.

Conclusion

In conclusion our first year under the hazardous waste program has been demanding but successful. We were wise, we feel, in waiting for EPA to move the Subtitle C program rather than attempting to launch an independent one of our own. Staff capability has grown significantly but it will be some time before the program matures even for Phase I. We are anxious to get the program settled into a routine operating mode. Our ability to do this is governed by such "outside events" as further EPA changes within the program, EPA activities on uncontrolled sites and Superfund sites which demand our involvement, unpredictable episodes relating to hazardous waste, and the pace of Phase II implementation. All of these place important demands on the same Delaware staff.

In spite of all the false starts with EPA regulation changes in the first year, we believe it was best to start when we did and learn the program from the outset right along with EPA regional staff and with our regulated industries. Challenging as it has been, it would be still harder to play catch up.

We are impressed with the very significant state leadership that is being exhibited in our region on hazardous waste management including not just environmental agencies coordinating manifests and jointly developing screening criteria for hazardous waste sites, but by State Justice and police agencies as well. We are a part of a growing network of interstate cooperation in hazardous wastes management. While this interstate cooperation is laudable, much of it was the necessary response to inadequate leadership at the national level.

In this regard we applaud efforts to amend the Federal Advisory Committee Act to enable states to participate actively and effectively with EPA regulatory reform. As some of the obvious problems in implementing RCRA demonstrate, States need to participate in national program development.

Finally, I strongly recommend that EPA set a high priority on providing thorough training for State personnel as well as timely technical backup. The safety of our staff members in the field as well as in the laboratory is directly related to the adequacy of their training. Each state cannot afford to duplicate the expertise which EPA should - as a high priority - make available in this area.

Thank you

STATEMENT OF THE WEST VIRGINIA ATTORNEY GENERAL'S OFFICE, CHAUNCEY H. BROWNING, ATTORNEY GENERAL, BEFORE THE SENATE SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

NOVEMBER 24, 1981

CHAIRMAN DURENBERGER AND MEMBERS OF THE SUBCOMMITTEE.

MY NAME IS RUTHANN MCQUADE, AND I AM AN ASSISTANT ATTORNEY GENERAL FOR THE STATE OF WEST VIRGINIA.

THE ATTORNEY GENERAL HAS A VITAL INTEREST IN THE SUBJECT BEFORE THIS SUBCOMMITTEE TODAY AND IS DELIGHTED TO HAVE THE OPPORTUNITY TO HAVE HIS VIEWS HEARD AND IS HOPEFUL THAT THEY WILL ASSIST THE SUBCOMMITTEE IN MAKING RECOMMENDATIONS FOR CHANGES OR IMPROVEMENTS IN THE STATE IMPLEMENTATION OF FEDERAL PROGRAMS.

AT THE OUTSET, LET ME MAKE IT CLEAR THAT I ONLY SPEAK ON BEHALF OF THE STATE OF WEST VIRGINIA BECAUSE TIME DID NOT PERMIT CONFERRING WITH OTHER STATES ON ANY PROBLEMS THEY ARE EXPERIENCING IN THE DEVELOPMENT OF THEIR PROGRAMS. HOWEVER, I THINK ONE COULD PRESUME THAT THE PROBLEMS EXPERIENCED BY WEST VIRGINIA IN THE DEVELOPMENT OF ITS PROGRAM ARE THE SAME AS OTHER STATES SIMILARLY SITUATED.

BEFORE DESCRIBING ANY OF THE SPECIFIC PROBLEMS ASSOCIATED WITH THE STATE'S IMPLEMENTATION OF THE FEDERAL RCRA PROGRAM, IT MIGHT BE HELPFUL FOR THE SUBCOMMITTEE TO UNDERSTAND THE MAKEUP OF WEST VIRGINIA'S HAZARDOUS WASTE MANAGEMENT PROGRAM, AND ITS RELATIONSHIP TO THE ATTORNEY GENERAL'S OFFICE.

UNLIKE MANY STATES, WE DO NOT HAVE A STATE EPA. RATHER, WE HAVE A CONSTELLATION OF SEVEN STATE AGENCIES, INCLUDING THE AIR POLLUTION

CONTROL COMMISSION, OIL AND GAS COMMISSION, DEPARTMENT OF HIGHWAYS, DEPARTMENT OF HEALTH, PUBLIC SERVICE COMMISSION, AND DEPARTMENT OF NATURAL RESOURCES, INVOLVED IN THE IMPLEMENTATION AND ENFORCEMENT OF THE NEW STATE HAZARDOUS WASTE PROGRAM. I WOULD ASK YOU TO KEEP IN MIND THIS MULTIPLICITY OF STATE AGENCIES WHEN I LATER DISCUSS PROBLEMS, BECAUSE TO THE EXTENT WE EXPERIENCE ANY PROBLEMS WORKING WITH EPA, THEY ARE COMPOUNDED BY THE NUMBER OF STATE AGENCIES INVOLVED.

THE ATTORNEY GENERAL'S OFFICE HAS BEEN MORE INVOLVED IN THE DEVELOPMENT AND IMPLEMENTATION OF THE STATE'S HAZARDOUS WASTE MANAGEMENT PROGRAM THAN IN ANY OTHER COMPARABLE FEDERAL-STATE ENVIRONMENTAL PROGRAM. WE BECAME INVOLVED AT ITS INCEPTION WHEN THE LEGISLATURE REQUESTED THAT WE DRAFT LEGISLATION THAT WOULD ENABLE THE STATE TO ASSUME PRIMACY FOR RCRA. WE DID SO AND IT PASSED IN APRIL 1981. UNFORTUNATELY, THIS WAS TOO LATE FOR THE STATE TO BE ELIGIBLE TO QUALIFY FOR INTERIM AUTHORIZATION UNDER SECTION 3006 OF RCRA, SO CONSEQUENTLY, WE ARE NOW OPERATING UNDER A COOPERATIVE ARRANGEMENT WITH EPA. I MIGHT NOTE IN PASSING THAT THERE ARE APPROXIMATELY TWENTY-SEVEN (27) OTHER STATES WORKING UNDER COOPERATIVE ARRANGEMENTS. I UNDERSTAND THAT EPA IS CONSIDERING EXTENDING THE DATE THAT STATES CAN APPLY FOR INTERIM AUTHORIZATION. FOR OBVIOUS REASONS, THIS WOULD BE EXTREMELY BENEFICIAL TO WEST VIRGINIA AND THE OTHER STATES WITHOUT INTERIM AUTHORIZATION.

THE HAZARDOUS WASTE MANAGEMENT ACT, AS IT WAS TITLED BY OUR STATE LEGISLATURE, REQUIRED THAT SEVEN STATE AGENCIES PROMULGATE REGULATIONS IN THEIR RESPECTIVE AREAS OF JURISDICTION AND EXPERTISE. THE LEGISLATURE ALSO DIRECTED THESE AGENCIES TO PROMULGATE

SUCH RULES TO BE "CONSISTENT" WITH THOSE PROMULGATED BY EPA AND FURTHER, THAT THE PROGRAM DEVELOPED UNDER THE ACT BE "EQUIVALENT TO AND CONSISTENT WITH" THE FEDERAL PROGRAM. AT THE TIME THIS LEGISLATION WAS BEING CONSIDERED, I WAS PERSONALLY INVOLVED IN ADVISING THE MEMBERS OF THE LEGISLATURE AND CONFERRING WITH THE AGENCIES ON THE SUBSTANCE OF THIS LEGISLATION. OUR OFFICE RELUCTANTLY AGREED TO THE "CONSISTENCY" LANGUAGE DESCRIBED ABOVE BECAUSE WE HAD REVIEWED EPA'S RCRA REGULATIONS AND FELT THEY WERE ADEQUATE TO PROTECT THE HEALTH OF OUR CITIZENS AND THE ENVIRONMENT OF OUR STATE. HOWEVER, THE NIGHTMARES THAT THIS PARTICULAR LANGUAGE IS CAUSING IN OUR STATE PROGRAM BECAUSE OF EPA'S CONTINUAL CHANGING, SUSPENDING, AMENDING, REVIEWING, AND ELIMINATING RULES AND REGULATIONS, IS UNBELIEVABLE.

THE VARIOUS STATE AGENCIES CHARGED WITH RULE-MAKING, PROPOSED REGULATIONS IN JULY OF THIS YEAR AND SCHEDULED PUBLIC HEARINGS. PRIOR TO THE CLOSURE OF THE PUBLIC COMMENT PERIOD, EPA HAD MADE SUBSTANTIAL CHANGES, OR GIVEN NOTICE THAT THEY EXPECTED TO MAKE SUBSTANTIAL CHANGES IN MANY IMPORTANT SECTIONS OF THEIR REGULATIONS. FOR EXAMPLE, THE FINANCIAL RESPONSIBILITY REGULATIONS PROMULGATED BY EPA ON JANUARY 12, 1981, ARE NOW IN JEOPARDY OF BEING SIGNIFICANTLY WEAKENED OR ENTIRELY ELIMINATED. THIS LEAVES OUR STATE AGENCIES IN AN EXTREMELY DIFFICULT POSITION. THE AGENCIES COULD GO BACK TO THE DRAWING BOARD AND DEVISE THEIR OWN FINANCIAL RESPONSIBILITY REGULATIONS BUT IT IS VIRTUALLY CERTAIN THAT THESE REGULATIONS WOULD THEN BE CHALLENGED IN COURT.

OR, WE COULD LEAVE IN FORCE THE PROPOSED FINANCIAL RESPONSIBILITY REGULATIONS WHICH INCORPORATE EPA'S JANUARY 12TH REGULATIONS, BUT INDUSTRY WOULD AND HAS ARGUED THAT THE "CONSISTENCY" LANGUAGE WOULD PREVENT US FROM DOING THIS.

Finally, we could attempt to avoid industry challenges altogether by imposing no financial responsibility requirements whatsoever. This last alternative is unpalatable for two reasons. First, it is our position that financial responsibility requirements are essential if the public is to have any confidence in our program. Second, even if our position were different, the failure to regulate in this area would certainly provoke litigation by concerned environmental groups because of the State statutory mandate to promulgate rules and regulations establishing financial responsibility requirements.

Another example of EPA's action having a detrimental effect on our State program is its proposal on October 20, 1981, to suspend the effective date of interim final rules on standards for existing incinerators and storage surface impoundments. Several industry commenters have noted this action by EPA and have suggested, and I quote, "that the state should not move ahead with promulgating Part 264 standards for storage and treatment impoundments until such time as EPA makes a determination as to its future course in this area."

These examples illustrate graphically the untenable position that EPA has placed our State agencies in. Essentially, the agencies were operating under the assumption, when they supported the "consistency" language in the State statute that the federal regulatory program in existence at the time the statute was passed would remain substantially the same. However, much to their dismay, they now find the federal program is being completely reshaped and that under the provisions in the State statute, they may likely be required to make the same changes that EPA has already made or contemplates making.

Consequently, as a direct result of EPA's actions, the State agencies responsible for rule-making will be unable to meet the statutory deadline for promulgation of their hazardous waste regulations. Further, there is a growing concern among the various state agencies that they will be adopting a less than adequate regulatory program; a program that will not protect the public health and environment, if they are forced to adopt EPA's changes.

I have been addressing the impact that EPA's actions have had on our state hazardous waste program. However, EPA's failure to act has had an equally devastating effect on our program. Most notable, is their failure to promulgate final Phase II standards for land disposal facilities. This inaction leaves essentially unregulated, large numbers of improperly designed landfills and surface impoundments, the very facilities that present the greatest hazard to human health and the environment. Although our State agencies would like to promulgate their own sets of regulations to fill the gaps resulting from EPA's inaction, the "consistency" language adopted in our State statute may, or so industry agrues, prevent them from doing so. Furthermore, even if statutory authority existed to develop and support such standards, it is unrealistic to expect the State to have the resources and expertise to independently develop such regulations without any guidance from EPA.

I do not want to give the impression that the relations between the State and EPA are entirely negative. In fact, EPA and the State agencies, pursuant to the cooperative arrangement, have been very successful in coordinating their enforcement actions and avoiding an unncessary duplication of resources.

Under our State Hazardous Waste Management Act the State promulgated emergency regulations which permit us to bring actions under

THE "MONITORING ANALYSIS" SECTION (IDENTICAL TO RCRA'S SEC. 3013), AND UNDER THE "INTERIM STATUS-TRANSITION SCHEME." FOR INSTANCE, UNDER THE STATE INTERIM STATUS SCHEME A FACILITY IS TREATED AS HAVING A PERMIT IF IT HAS COMPLIED WITH ALL THE FEDERAL 3005 STANDARDS, AND IS OPERATING IN SUCH A MANNER AS WILL NOT CAUSE OR CREATE A SUBSTANTIAL RISK OF A HEALTH HAZARD OR PUBLIC NUISANCE OR A SIGNIFICANT ADVERSE EFFECT UPON THE ENVIRONMENT. THE FEDERAL STATUTE DOES NOT CONTAIN THIS LAST CLAUSE, AND SO THE STATE'S ENFORCEMENT ACTIONS CAN AND DO COMPLEMENT THE FEDERAL ENFORCEMENT ACTIONS, WHERE THE STATE HAS BROADER ENFORCEMENT AUTHORITY. SIMILARLY, EPA HAS THE AUTHORITY TO ADMINISTRATIVELY ASSESS CIVIL PENALTIES FOR VIOLATIONS WHILE THE STATE DOES NOT.

HOWEVER, WHILE THE STATE HAS BENEFITTED TREMENDOUSLY FROM THE COOPERATION WITH EPA ON ENFORCEMENT, THE ACTUAL NUMBER OF CASES BEING BROUGHT BY THE ATTORNEY GENERAL'S OFFICE HAS BEEN DRAMATICALLY CURTAILED DUE PRIMARILY TO THE DRAIN OF OUR RESOURCES RESULTING FROM EPA'S CONTINUAL CHANGES TO ITS REGULATIONS. MONITORING EPA'S RULEMAKING CHANGES REQUIRES OUR DAILY ATTENTION. IF THIS CONTINUES, IT WILL CRIPPLE OUR ENFORCEMENT EFFORTS. GIVEN THIS, ONE CAN ONLY WONDER WHERE WE WILL FIND THE RESOURCES TO HANDLE THE ADDITIONAL ENFORCEMENT RESPONSIBILITIES THAT EPA NOW PROPOSES TO SHIFT TO THE STATE.

AS FAR AS FINANCIAL INCENTIVES FOR DEVELOPMENT AND IMPLEMENTATION OF THE PROGRAM, WEST VIRGINIA HAS BEEN VERY FORTUNATE TO RECEIVE AN AMOUNT OF FEDERAL GRANT MONEY THAT IS ADEQUATE FOR ITS PROGRAM. HOWEVER, AFTER SPEAKING WITH THE DIRECTOR OF THE HAZARDOUS WASTE PROGRAM, IT WAS APPARENT THAT IF THE FEDERAL FUNDING DOES NOT CONTINUE AT SUBSTANTIALLY THE SAME LEVEL--THEN THE STATE WILL BE IN A DIFFICULT SITUATION.

In anticipation of funding problems, we tried last year to incorporate a funding mechanism within the Act, and were successful in creating a Hazardous Waste Management Fund which derives its funds from permit application fees and fines and penalties from the enforcement actions brought under the Act. However, according to the program's fiscal officer, the amount that this fund will contribute to the overall costs of the program is approximately 10-20%. Consequently, in the event federal funds are cut the State will be left with seeking close to $800,000.00 from the Legislature in general revenues funds. Needless to say, with the existing economic situation, it is very doubtful that such funding will be forthcoming. Consequently, we are already preparing draft legislation for this legislative session for another fund which will derive its monies from a tax on disposers of hazardous waste. This, of course, is only in the preliminary stages, so we have no feeling for the receptiveness by legislators for such a fund. Given the past record of our State Legislature on imposing taxes, however, it is doubtful that they will embrace the idea of taxing the manufacturing industry with open arms, but if federal funding is reduced, we will have no other viable alternative.

Before I conclude my presentation, I would like to make an additional comment on an issue in which the Subcommittee has expressed an interest. One general principle of federal-state regulation that I have observed during my work with the implementation of the State RCRA program, is that states need the flexibility to set more stringent standards where appropriate. Section 3009 of RCRA explicitly provides that states may impose standards more stringent than the federal

STANDARDS. STATES MUST BE ABLE TO TAILOR REGULATIONS TO THEIR PARTICULAR NEEDS. FOR INSTANCE, ONE OF THE STATE'S PROPOSED LOCATION STANDARDS PROVIDES THAT DISPOSAL FACILITIES MUST NOT BE LOCATED WITHIN ONE THOUSAND FEET (1000') OF A SUB-SURFACE MINING AREA. THIS IS AN AREA IN WHICH ONE STATE HAS CONSIDERABLE EXPERTISE AND EXPERIENCE. EPA, ON THE OTHER HAND, DID NOT DEVELOP LOCATION STANDARDS WITH RESPECT TO SUBSURFACE MINING AREAS. IF WE WERE NOT FREE TO IMPOSE MORE STRINGENT STANDARDS, PARTICULARLY ON LOCATION STANDARDS, THEN NEW HAZARDOUS WASTE FACILITIES WOULD BE PERMITTED TO LOCATE DIRECTLY OVER UNDERGROUND MINE SHAFTS WITH A HIGH POTENTIAL FOR SUBSIDENCE. THUS, THE LANGUAGE OF SECTION 3009 MUST BE RETAINED.

IN CONCLUSION, LET ME SAY THAT I'VE TRIED TO OFFER SOME CONSTRUCTIVE CRITICISM FOR THE PERSPECTIVE OF A STATE ATTORNEY GENERAL'S OFFICE ON WHAT I PERCEIVE AS SOME OF THE MAJOR DIFFICULTIES EXPERIENCED BY A STATE IN ITS IMPLEMENTATION AND DEVELOPMENT OF A FEDERAL ENVIRONMENTAL PROGRAM. I TRUST THESE COMMENTS WILL BE USEFUL TO YOU IN FORMULATING YOUR FINAL RECOMMENDATIONS.

THIS CONCLUDES MY PREPARED REMARKS, BUT I'LL BE HAPPY TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.

Senator DURENBERGER. Just to keep warm, why don't we have our next three witnesses come up together? Mr. Mullen, Mr. Taub, and Mr. Hayes. We will take you one at a time.

Up to this point in our hearing we have heard from Government witnesses who are responsible for operating and enforcing the hazardous waste programs. We are now going to hear from witnesses—some of whom must comply with the regulations, and others who are representatives of those who are to be protected by the legislation we are implementing.

The first of the witnesses is Hugh Mullen, director of government relations for I.U. Conversion Systems, a hazardous waste disposal site operator. Mr. Mullen also served as vice chairman of the Institute of Chemical Waste Management of the National Solid Waste Management Association. We will then hear from Steven Taub, vice president of Technical Services for the Stablex Corp., a hazardous waste treatment and disposal site operator. Finally, we will hear from Mr. Timothy Hayes, who is representing the Environmental Defense Fund.

We appreciate all of your being here today. We will start with you, Mr. Mullen.

TESTIMONY OF HUGH MULLEN, DIRECTOR OF GOVERNMENT RELATIONS, I.U. CONVERSION SYSTEMS, AND VICE CHAIRMAN, INSTITUTE OF CHEMICAL WASTE MANAGEMENT, NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION; STEVEN I. TAUB, VICE PRESIDENT, STABLEX CORP.; AND TIMOTHY G. HAYES, ENVIRONMENTAL DEFENSE FUND, RICHMOND, VA.

Mr. MULLEN. Thank you, Mr. Chairman. I have submitted a written statement to be included in the hearing record. I will summarize my statement.

Senator DURENBERGER. All of your statements will be made a part of the record following the oral testimony. You may feel free to summarize them as appropriate.

Mr. MULLEN. Thank you.

Conversion Systems is one of the Nation's leading hazardous waste service companies. Our company operates three facilities in two States. Other member companies of the Institute of Chemical Waste Management are, likewise, engaged in providing treatment and disposal services for hazardous waste generated by American industry. As distinct from those industries which generate wastes and manage them themselves onsite, members of the Institute of Chemical Waste Management accept hazardous wastes from the vast spectrum of industrial generators for treatment and disposal.

The Institute of Chemical Waste Management is an arm of the National Solid Waste Management Association [NSWMA], the national voice of the waste management industry. Composed of more than 2,000 waste service firms, NSWMA has actively supported a responsible national program for proper hazardous waste management. NSWMA has steadfastly supported the implementation of a national hazardous waste management program at the State level.

The Federal Government must provide leadership. The program must be characterized by relatively uniform standards of acceptable practices for waste handling by waste generators, transporters and treatment, storage and disposal facility operators. There should be a uniform national manifest—and, parenthetically, I was very happy to hear Mrs. Gorsuch say that we will have such a thing in the near future—to facilitate tracking of hazardous wastes cradle to grave.

Similarly, acceptable technology should be reflected in relatively uniform national design-based performance standards. Other requirements like financial responsibility should also be imposed by Federal regulations. Federal oversight should assure that no barriers are allowed to impede interstate shipments of hazardous wastes.

On the other hand, States are in a far better position to understand exactly how national standards are best translated into acceptable permits. State-level enforcement offers assurances that regulators are not distant, detached and uninterested in conciliatory compliance. NSWMA favors Federal standards, with State implementation and enforcement.

Let me turn my attention to the questions which you posed, Mr. Chairman, in your invitation to testify today.

Under phase I of RCRA, in force today, half of the States have received interim authorization to operate their own substantially equivalent programs, while the remainder have generally entered into cooperative agreements with the U.S. EPA, to enforce the Federal standards. We should recognize that there will always be differences between States which have authorization to run their own programs and States regulated under the Federal rules, because RCRA permits States to be more stringent in their requirements than the Federal standards.

We are concerned that the program allows irrelevant distinctions in setting the rules for onsite generator-operated treatment and disposal facilities and offsite commercial facilities. The facilities perform the same functions, handle the same classes of waste, and represent the same potential threat to the public health and environment. Yet, EPA has allowed some States to legislatively discriminate between substantive standards for onsite and offsite facilities. It still accepts their programs as substantially equivalent.

The Federal regulations, on the other hand, impose uniform standards for all handlers of hazardous waste. These regulations are based solely on the relative threat to the public which might be caused by mismanagement of those wastes. Indeed, that is the statutory mandate of section 3004 of RCRA.

Many of the States which have not received interim authorization have their own State hazardous waste statutes. Some of these statutes impose procedures, or substantive standards, at variance with the Federal program. You questioned whether having to comply with dual regulatory programs represents a significant obstacle to industries operating in those States. In practical terms, our companies have not found that to be the case.

It is now 5 years and 1 month since RCRA was enacted. We still await clear definition of the Federal standards. The lack of permanent Federal standards presents severe difficulties for facility operators. It has also placed the States at a serious loss in fashioning their programs to be in full compliance with the Federal program. The delays have also severely handicapped the permitting of new facilities.

For example, in one case, an application originally filed for a State permit and deemed acceptable, was delayed due to local opposition. The delay prevented the facility from obtaining interim status. The application was refiled under part 265 of the Federal regulations. Before it could be acted upon, part 267 of the regulations was promulgated, resulting in a 9-page request for additional information. Development of that information will cost several hundred thousand dollars. Perhaps the EPA will issue final regulations—part 264—by February 1 of next year. At this time, however, there is no way of knowing whether the information requested will satisfy the final regulations. It is important to point out here that no new hazardous waste landfill has been permitted in the Eastern United States in the past 2 years.

Delays in implementing the Federal program have undermined the public's confidence in a Federal hazardous waste management program and in the credibility of the U.S. EPA. That is probably the most serious and distressing development associated with the tangle of redtape in the EPA. The public's confusion and lack of confidence in EPA translates directly into the frustration, on the part of our industry, in trying to persuade local communities to host a new generation of RCRA-designed hazardous waste facilities. Unless, and until, these new facilities are brought on line, the Nation will have no alternatives to the continued disposal of hazardous wastes in facilities constructed to meet pre-RCRA standards, if they were regulated at all.

The Federal Government has an important role in funding the national hazardous waste program. After all, Congress directed State programs to be equivalent to the Federal program. The U.S. EPA is pledged to operate, in toto, the Federal hazardous waste program in those States which do not receive Federal authorization. Thus, the Federal Government should provide grant assistance to the States for program management. Today these funds are inadequate to staff professional State regulatory efforts. Congress should consider additional appropriations for support of State programs to prevent the proliferation of the crazy quilt of local user charges and taxes, which distorts the waste disposal marketplace.

Your subcommittee has already conducted hearings investigating State implementation of the Clear Air Act and the Occupational Safety and Health Act. If we can draw any clear lessons from RCRA to supplement your observation on the common theme of State implementation, they are as follows: First, the Federal Government should provide clear signals to the States which are expected to implement the program. The Federal Government should issue its rules in a timely manner and make only those changes which prove necessary.

Second, the Government should not look upon State implementation of Federal requirements as a cheap way to get the job done. If the job is to be done, and done well, it will be necessary for the Federal Government to spend as much money as if it were to staff a Federal agency to do the job directly. The advantage, of course, is that the Federal bureaucracy does not need to grow nearly as much, and the program can be more effectively implemented at the State level.

Mr. Chairman, that concludes my prepared remarks. I would like to emphasize that the two greatest impediments to State implementation and, indeed, to the entire hazardous waste program are delay and indecision. When we get good, workable Federal regulations in place, everything will go a lot smoother.

If I may support the previous witnesses from the States, there is one major point that has not been brought out yet. It is that, in granting interim status through the notification process in 3010, EPA has legitimized some 15 to 30,000 waste disposal facilities, and treats them, in their own words, "As if they had a Federal permit." The enforcement program—the management program—has not been mentioned up to this time. Those facilities that were legitimized do not have RCRA permits and do not meet RCRA standards, because there are none. They are going to have to be inspected and upgraded, or closed. That is in the program which the States will have to undertake. They will need the funds to do it.

Thank you.

Senator DURENBERGER. Thank you very much, Mr. Mullen.

Mr. Taub.

Mr. TAUB. Thank you, Mr. Chairman.

My name is Steven Taub. I am vice president of the Stablex Corp. We have submitted a written statement to your subcommittee for review. I would like to depart from those remarks and discuss some aspects which we believe need to be amplified.

First, I would like to identify who and what Stablex is. Stablex is a company engaged in the conversion of potentially toxic and hazardous inorganic waste materials to a nonhazardous form. Because of that, we are in the unique position of being able to cover two types of permits: First, a permit to operate a toxic and hazardous waste treatment facility and, second, a permit for nontoxic and nonhazardous materials. This places us in a somewhat difficult and unique position.

Prior to Stablex's accepting a material for processing and converting it to a nonhazardous form, we institute a series of quality control checks on the customer's sample. We do this to assure that the sample can be converted, under the RCRA standards, to a nontoxic, nonhazardous form. Once that has been achieved, then we contract with the company to bring in the materials to ultimately process them. Prior to accepting the materials at the site, further tests are conducted to assure that the load corresponds to the material originally contracted.

Once the material is accepted for treatment at the facility, various pretreatment steps are performed in a chemically intensive, very well constructed, processing plant. This plant is very, very difficult to distinguish from an ordinary chemical processing facility. As a matter of fact, the wastes that Stablex treats are exactly similar to the materials being produced every day in chemical processing facilities.

The only reason a material is called a toxic and hazardous waste is because a user no longer knows what to do with it. Stablex takes these materials and removes the toxic and hazardous character by various pretreatment steps in this chemical processing facility. These are done by chemical engineers, chemists and other scientists and process technicians. The resultant product produced from the process is tested to assure that it conforms with all the RCRA requirements for a nonhazardous material. Then the material can be used for positive purposes, such as land reclamation.

Stablex Corp. does not operate a dump. We object to being placed in that category—just because we operate what is called a toxic and hazardous treatment facility—or as a dump operator and waste disposer, because we don't dispose of the waste. As a matter of fact, a Michigan court found that the Stablex material is not a waste. It is a productive material. This occurred after an extensive court hearing which lasted up to 9 months.

Stablex is a self-funding corporation. To date, we have spent millions of dollars trying to develop our process. So far, we have permits, but no operating facilities, because of various local opposition which I can cover later.

Now to get to some of the problems you raised in your request for comments. First, we would like to discuss delisting—what it is, and why it is needed, especially for a company like Stablex. To date, the RCRA program mandates that a material, once a hazardous waste, is always a hazardous waste. The only way to achieve the nonhazardous status is to convert the material from a hazardous form to a nonhazardous form and check it, using the EPA criteria as published in the Federal Register.

Stablex Corp. has applied for a delisting and has received an interim delisting from the EPA for its proposed Michigan facility. However, we have a problem. The problem is that, for each facility Stablex proposes to construct in the United States, we must repeat the process over and over and over again. Information stacked up for one facility—Mrs. Gorsuch raised her hands; I can raise my hands, as well—can be as much as a foot high. Each facility Stablex plans to build and operate as a regional waste management facility is exactly the same. We can't see any reason why we need to do redundant processes when, effectively, the EPA has already said that the material we can produce from a facility may be nonhazardous.

I would like to compliment, however, some of the people in the EPA. They have been working diligently on these delisting procedures. These people include David Friedman, Alan Corson and Matt Strauss, all with the EPA Solid Waste Management Branch.

However, we see these problems as being redundant and an inefficient use of management time. It is a problem as the State implementation program emerges. If the States decide that they will address their own delisting criteria, that will mean that Stablex, and other companies like it, will have to go through multiple delisting.

Where do we stop—at the State level, at the local level? Do we stop at a person in the community saying, "I am not satisfied that the material isn't hazardous?" It is effectively the same thing as having a drug qualified by the Federal Drug Administration as being a safe drug, then having each State decide whether or not the drug can be used in its own State, and then having the local community decide whether it can and needs to be used in the local community.

Next, we see a fatal flaw in the implementation of RCRA. The fatal flaw is that the States can be allowed to apply for more stringent standards than EPA's. Where is the more stringent standard to stop, especially for a responsible waste management company that has responsible employees, that employs professionals in the chemical field, and knows what it is doing? We find it difficult to understand where this stringency will lead. So far, it has led to no permits and no operating facilities since 1976—since the enactment of RCRA. I think that is a shame.

Concerning the State programs' equivalence, we believe the EPA sometimes closes its eyes to comments. I will give you an example. We recently wrote a letter commenting on the State of New Hampshire's interim authorization proposal to the EPA. The EPA published in the Federal Register the interim authorization that it granted to the State of New Hampshire. They said that they received no comments. The Stablex Corp. spent much time in developing its comments. We have much experience in dealing with the State of New Hampshire, because we have had permit applications on file with them since last September. Here it is November of 1981 and the State has just begun to review them. That is a year's delay in just the review process. Still, the EPA says in the Federal Register they received no comments. We believe that is inexcusable.

Stablex has made the offer to various States. We will make it again today. We will build a plant anywhere if there is a regional market tomorrow morning. All we want to do is build a plant, operate it and demonstrate that we can convert toxic and hazardous wastes to a nonhazardous form. We seek no handouts. We seek no Federal funding. As a matter of fact, we cannot understand why the Federal Government doesn't make Federal lands available to demonstrate this process and technology rather than spending EPA funds on research and development which may or may not lead anywhere.

Finally, I would like to address for a moment an experience that Stablex recently had with Canada. Stablex is a sister corporation of Stablex Canada, Ltd. Stablex Canada, Ltd. applied for permits after the Province of Quebec did an exhaustive study to determine which chemical waste processing company they should locate in their Province. Out of all the companies, they chose Stablex Canada, Ltd. to do the job. They held public hearings. There was much opposition at the public hearings, as is normal. However, the local community officials, as well as the Province officials, were strong enough in their own beliefs that the development of a process and a technology of this type was needed for the Province of Quebec, even under local opposition. They wrote the permits in such a way that they had an answer to the local opposition and still were able to grant the permits. This is a first.

We believe that if Canada can do that, so can the United States. All we ask is for responsive officials to understand that the problem is continuing. It is not being solved. There are open dumps; there is open dumping; and there is irresponsible disposal of chemicals. Stablex does not plan, wish or need to dispose of chemicals in this fashion. We do it through a process that can change the character of materials.

In closing, I tried to identify what Stablex is and what we plan and wish to do. I tried to cover the delisting criteria and requirements and the necessity to have a clear and good understanding that, once the delisting is applied for and all the circumstances are exactly the same, there is no need for a redundant review. I tried to identify the fatal flaw, as we see it, in the stringency requirements, because stringency may not stop at a reasonable point. I tried to identify some of the problems, as we perceive them, in equivalence—that is, the EPA noncomments to a company like Stablex in reauthorizations. I tried to show you how a governmental entity dedicated to the achievement of proper and needed toxic and hazardous waste control can, under local opposition, still deal with it in a reasonable fashion.

Last, I make the offer that I made before—that is, we will build a plant anywhere in a regional market area to demonstrate we can do what we say with our own funds. All we wish is the chance to do it.

Thank you.

Senator **Durenberger.** Mr. Hayes, good morning.

Mr. **Hayes.** Good morning. I am Timothy Hayes, Virginia Project Director for the Environmental Defense Fund (EDF). With me this morning is David Lennett of the EDF Washington office.

Dave and I are both attorneys on EDF's toxic programs staff. EDF has been extensively involved during the past several years with administrative, litigation and other activities to achieve effective implementation of RCRA. Our interests in this area naturally extend to State implementation, because States have such a necessary role in the partnership with the Federal Government. Through the EDF Virginia project, which is located in Richmond, we have been involved, since mid-1980, in the development and implementation of Virginia's waste management program and regulations, and in the control of toxic materials under the Clean Water Act and other Federal statutes, as well as State statutes.

From 1976 until I joined the EDF staff in June of 1980, I was an assistant attorney general in the environmental section of the Virginia attorney general's office in Richmond. My primary responsibilities there involved the provision of legal support to the State Water Control Board in the implementation and enforcement of the NPDES program and the State Water Control Law. The authority for the NPDES program was assumed by the State Water Control Board in 1975.

In that capacity, as well as in my present position, I have had the opportunity to observe—at least in Virginia—the effectiveness of the combined Federal-State approach in the implementation of RCRA and the Clean Water Act. These are, of course, similar to the approach contained in many other Federal and State environmental statutes.

Speaking for myself as an ex-assistant attorney general, I would like to associate myself with the comments made by the West Virginia assistant attorney general this morning. There was a very strong sense of deja vu raised by her remarks. The Virginia hazardous waste management program is similar to West Virginia's in that it is the responsibility of several State agencies. We have no centralized environmental agency in Virginia. The State health department has primary responsibility for control of hazardous waste management activities. However, the State water control board also has considerable authority under State law, although its duties aren't very well spelled out.

As I will discuss in a few minutes, there are considerable uncertainties at the State level over what the program should involve. Some of the things being done at the Federal level now will only serve to exacerbate those problems.

Virginia's hazardous waste management law only went into effect in 1979. Prior to that, there had been no State-level regulation of hazardous wastes whatsoever. So, Virginia does not yet have the experience necessary to determine the hazardous waste program's effectiveness. They received interim authorization only 3 or 4 weeks ago from EPA. I think it is safe to say that without RCRA and without the Federal initiative, there would still be no hazardous waste law in Virginia.

Without the development of Federal standards for implementation together with Federal assistance, particularly in the technical area, the hazardous waste program will not move forward in our State. The same is true for other environmental programs, such as those under the Clean Water Act, with which I am most familiar. This isn't meant to place any aspersions on Virginia's government or on State governments. The States are absolutely indispensable to these environmental programs.

I would like to agree with many of the comments that were made by the State representatives earlier today. However, the cardinal fact that was recognized by Congress when they enacted RCRA and similar statutes in the 1970's was that environmental protection is a Federal function. By Federal, I don't mean just Federal Government; I mean all the units in the Federal system, which includes both the Federal Government and the States. Without the active and appropriate participation of all levels, it is simply not going to work.

The dissatisfactions, that we have seen in the area of Federal and State relations in the management of environmental programs during the past decade or so, are not the result of fundamental flaws in the concept that was designed by Congress back in the 1970's. I think it results from the flaws in execution that have to do with intergovernmental friction, and the failure of EPA to carry out such mandated functions as promulgating regulations on time, and similar problems.

These problems are set forth, with respect to the RCRA program, in some detail in our written statement. However, I will not read from it today, because it is simply too lengthy. They are also set forth, in some detail, in a report prepared by the General Accounting Office in August, 1980. That report is very accurate as to the problems it discusses at the State level.

We heartily agree with the need to adopt more flexible approaches to implementation of RCRA regulations and other environmental programs at the State level. We don't think that the administration's approach will lead to more effective State implementation.

I think that RCRA and other State implemented environmental programs will simply drift because of the underlying premise that the cuts should come first, and then EPA will look to see what effect it has had on State implementation. I think if EPA was to take a really careful look at what needs to be done to improve State implementation of programs under RCRA, they will see that they probably need to spend more money on Federal-State interaction rather than less. I think, so far, money has been spent in the wrong directions. I don't think the problem can be solved by simply reducing the Federal role, because of several problems which are unique to State administrations. I think everyone in this room has probably heard this before, but I would like to give you a few examples of how they really work at the State level.

The first thing is the delay and confusion in the implementation and promulgation of Federal regulations. The cut-backs in Federal efforts to implement programs, such as RCRA, are not, in many cases, going to be met by staff initiatives to fill the vacuum. I think they will be met, in many cases, by State inaction.

I could tell you three examples in Virginia where that has already happened. The pretreatment program is one. The pretreatment program in Virginia was dragged out to final fruition after many months—in fact, several years—of negotiations and, I will say, bickering between the Federal Government and the State government. The State of Virginia finally agreed to take the pretreatment program, despite its misgivings.

When the pretreatment regulations were put in limbo several months ago, the State simply dropped the idea of enforcing a pretreatment program. There is no pretreatment program in Virginia, and there won't be, unless EPA puts more pressure on the State to do so.

The same is true with the section 307 toxic effluent limitations. The lack of 307 toxic limitations means that toxic effluents are simply not being regulated in Virginia, because the State Water Control Board is not about to write them into permits without being required to do so by the Federal Government.

The State of Virginia had gone through the process of holding hearings on its financial responsibility requirements for hazardous waste facilities. It was ready to adopt financial responsibility requirements which were very good. My organization and others participated in their development. However, when they were put on hold by EPA, the State, rather than going ahead and adopting the State requirements, simply put them in the basket to wait and see what EPA would do.

The land disposal regulations are another problem. You have heard about those today. I won't elaborate on those. State governments are under their own budgetary constraints. They are under considerable political pressure, in some cases, not to do anything more stringent than what the Federal Government requires. We have provisions that say that State agencies can't require anything more stringent than what EPA requires. The agencies are simply unable to pick up that initiative—even if they had the money, even if they had the manpower, and even if they had the time, which they don't. They are simply under too much political pressure, in the State legislature and from political forces within the State, not to move any faster than the Federal program requires.

Another problem is that I don't think the EPA really appreciates the in-State political impact which the Federal presence has on the ability of States to carry out their programs. This is an extension of what I just discussed.

States are under pressure to reduce their budgets and to allocate available budgetary resources into areas such as education, welfare, and medical care. The cabinet officials and budget directors are fighting tooth and nail over every dime in the State budget. At the same time, they are under pressure from industry to keep regulations at the minimum that they are able to get away with. They are simply not able, without some outside force, to overcome those kinds of pressures, and adopt programs that they need to adopt in order to protect their environments. Without being able to go into the State legislature—and

I have had this experience myself on several occasions—and telling them that "if we don't do this, EPA is going to come down and do it for us," it is simply not possible to get the kind of support for environmental programs which is necessary to move these things ahead.

I think the fact that there was very little activity in a number of States prior to the adoption of the Federal laws in the 1970's proves that fact. The States are simply not able to move ahead, through the political morass that they need to move through, without some Federal assistance and pressure.

The third problem is that, even if EPA provides funds, even if it makes funding available to run State programs, they still have certain political and other considerations to take into account. We can't necessarily meet the increased funding levels for a program's implementation.

One example, again, is the pretreatment program. In Virginia, one of the reasons why the State did not want to take the pretreatment program was that it would require the hiring of additional personnel to administer the program. The EPA said that they would pay part or all of the costs of hiring additional personnel. Whereupon, the Governor said that he really didn't care who paid for the additional personnel. It was the policy of the State government not to increase personnel levels regardless of from where the money was coming. He was not going to hire additional employees during his tenure. In that case, the program is pretty much in a stalemate. The stalemate was finally broken when employees were transferred from other functions. That is the kind of thing that really is not taken into account, I think, in EPA's consideration.

Another problem is brought out by the GAO report. That is the problem the States have in competing with private sector salary levels in attracting qualified, trained personnel to run their programs. When they do get people to run their environmental programs, as soon as they are well trained and they have had a couple of years' experience, they are whisked away by industry who will pay them much better.

In summarizing—I see that my time is up—I think that the problems of State implementation of environmental programs are so complicated. The needs for assistance from the Federal Government are complex and much more intricate than simply giving the States money or not giving them money. There is a whole pattern or matrix of Federal involvement for these programs to work properly. Simply slashing a program and saying to the States, "You take this over," is going to result, I think, in chaos and inertia. It is going at it in exactly the opposite direction than it should be going.

Thank you.

Senator DURENBERGER. Thank you. I thank each of you for your testimony. It's clearly been an enlightening and also a very frustrating morning because I don't know how the witnesses were selected this morning. Regardless of which part of the spectrum the witnesses have come, I don't see a great deal of controversy, difference or arguing between the witnesses—whether it is the Director of EPA, the people from the State level, these two gentlemen who have come with a solution to the problem, or even Mr. Hayes who comes from several years of experience in dealing with this.

It just strikes me as a situation in which everyone recognizes the problem. Public opinion polls all over the country rank our concern for the environment above our concern for a whole lot of things which a lot of politicians tell us are more important than the environment. Yet we just keep spinning our wheels here, somewhere between a legislative mandate and a bureaucratic reaction to that mandate—the squeaking wheels that react out there at the local level every time you try to apply the process. It has to be more frustrating to those of you who are involved in the process, trying to get something done, than it is to me, listening to people recite their experiences of the last couple of years.

What we are trying to do, obviously, in this subcommittee and through this hearing—as I tried to reflect in my closing comments to Mrs. Gorsuch—is to try to find what it takes—the magnet, if you will—that brings all of these territories together and causes something to happen out there.

I don't know if there are Canadian magnets that somebody has designed. The Canadians have done some things, in the intergovernmental relations area, from which we ought to learn. Clearly, just sitting here looking at paying our so-called public obligations with promissory notes at the Federal level, and now doing the same thing at the State level, is not going to solve the problem. This is not giving into a public that says, "We don't want to be taxed any more, even though we prefer clean air, clean water, and safety from toxic wastes which may get in our water supplies, and so forth." How all that is brought together is a little difficult, sometimes, for us to envision.

The balance needs to be struck somewhere in this process—somewhere between the Federal role in setting a standard which can be as uniform as possible around the country for the benefit of those who must implement it, those who are part of the process, and the understanding of those who are supposed to benefit from it; and the role which the private sector, the States and the local communities must play. This balance is one that I would think we would have invented a model for somewhere else in the process.

My first question to all of you is, are there any models of these relationships, outside of this area, at which we ought to be looking? Where else, in the relationship between the various pieces of the Federal system, the private sector and the public might we have achieved the building of a process which might be replicated in some way here? Do any of you, in your experience, know of anything that we ought to be looking at to try to work our way out of these problems?

Mr. MULLEN. Unfortunately, I couldn't give you an answer on that, sir. I wish I could.

Senator DURENBERGER. One of the problems that didn't come up—and I am sorry I didn't ask the Director of EPA this question—is that, in our so-called plan for regulatory reform, we got ourselves into the whole notion of cost-benefit theories. I happen to be one of those people who assumes that the benefit analysis gets done when we, who are Congresspeople, make the decision that there is benefit in doing it a particular way.

To try, then, to reinvent the benefit wheel and put dollar signs next to it, against which we can then set a cost, is not necessarily the best way to implement public policy. Yet, we have had posed through

Executive Order 12291 the notions of cost-benefit. That, as I understand it, is also slowing down the EPA part of this process to a degree. That may be some of that 1 foot of paper about which we are talking. I'm not sure. Could all three of you react to this notion, in this particular area, of putting a lot of people through a lot of work to try to apply that cost-benefit judgment to this process? How appropriate is it for us to be spending a lot of time at this stage of the process with the cost-benefit analysis?

Mr. TAUB. I would like to take a first crack, if I could. I think the answer is a multipart answer. First, I would like to suggest that a structure and a framework in the RCRA rules have already been passed to allow industries to conform with certain guidelines. The States may take those guidelines or they may not.

To implement the program, mandated in 1976 by Congress, in 1982 or in 1983 seems to be ludicrous. We have wasted 7 years. There are industries willing to risk their capital dollars to do the job in a correct fashion. When a company builds a plant costing millions of dollars to accomplish a certain objective—that is, environmental improvement—it would be pretty crazy for that company to invest those dollars if it knew that it is going to impair and impede the environment.

So, I suppose, we should have a little bit more reliance, in my opinion, on private enterprise to solve the problem which private enterprise and private citizens really recognized as a problem 7 years ago. Let's get on with the task of solving the problem by using the framework of the RCRA rules and allowing industries to conform to those rules and simply build facilities.

With regard to public participation, there is no reason not to have individuals come and talk about their concerns in the construction and operation of a facility which surely can take care of difficult environmental materials, difficult to handle in the environment. The judgments made by the hearers of those arguments should basically be technological judgments as to whether or not that process is achievable.

In our experience, because you have asked of that experience, we have been to numerous public hearings. We find at the first public hearing perhaps 500 to 800 people attend; the second, 300; the third, 100; and fourth, perhaps 50. We have done surveys and have found that many of the people who no longer attend are satisfied. Most of the questions they were concerned about had been reasonably and adequately answered.

There are always going to be a number of people who won't ever be satisfied with any answer. One could always raise the question, "What happens if the school bus is on the same road as a truck that turns over?" That question comes up time and time again. It happens every day, independent of whether or not a treatment plant is available or not.

A treatment plant is a necessary part of society. The sooner society gets to recognize that, the better off we are going to be. The air and water rules will mean that, when they clean up the air and the water, they will run into solid waste. I don't think people quite understand that. After going to a number of hearings, I think they do. There will always be quite a few who don't. However, the public officials, the bureaucrats, must be strong enough—and I mean strong enough—to take a stand and say, "We need this; we need this now; and we will take the heat."

Senator **Durenberger**. The Stablex problem is not one of your getting a Good Housekeeping seal of approval——

Mr. **Taub**. That is right.

Senator **Durenberger** [continuing]. It is the failure down the line of some local public officials making a decision to site your facility in a location.

Mr. **Taub**. State and local. For example, we see the States, in some instances, attempting to impose stringency requirements to the point that it buries a company in paperwork. It gets beyond reasonableness with regard to what it is if this happens or that happens. It is impossible to cover every alternative in a business fashion. All one can do is the best he can do.

Senator **Durenberger**. Do either of the others of you want to comment on the cost-benefit issue?

Mr. **Mullen**. I would like to augment Dr. Taub's comments here. I think one of the things that is really necessary is political courage. We have not had that, particularly at the lower levels of government. It is difficult to convince the public that you can build a secure landfill, that you can build a safe facility, when the EPA states that it doesn't know how to write the regulations for it. Until those regulations are in place, there is very little that can be done. I can't convince anyone that we can do it correctly, when EPA says they don't know how to do it.

Senator **Durenberger**. Right.

Mr. **Hayes**. Without commenting on the philosophical or ethical considerations of using the cost-benefit approach, I think the regulations we are talking about today are all under congressional mandate anyway. We are not in agreement with the approach that the regulations be held up in order to perform a cost-benefit analysis which passes the deadline Congress has already set for the regulations.

I think the Supreme Court ruled in a similar fashion several months ago with respect to that approach.

Mr. **Taub**. Senator, one more comment. I could understand, for example, a reluctance on the part of the State and local officials if a toxic and hazardous waste material were being placed in the ground without treatment. However, there are companies such as Stablex and others that go through a tremendously costly process to treat materials and change them.

It is perfectly reasonable to place those materials into productive use. Why does one have to consider a waste always a waste, no matter what? If, tomorrow morning, the same industry producing that waste discovered there was a use for it, it would no longer be a waste. We have just been lucky enough to discover a use for it. We just want to use it.

Senator **Durenberger**. Is there anything else that we in the Congress should be doing other than spending more money which can expedite this whole process?

Is there any change in the law that needs to take place, any clarification of the law, or anything that we need to do other than go into the debate about where to spend our money?

Mr. TAUB. With regard to the implementation of the RCRA rules, I believe that Congress should lend its support to the existing rules as they stand, and foster the development of other rules as they become necessary. They should ask the States to, at least as a first step, conform with the rules as they exist.

Now, obviously, each State may have its own distinct concern. That is understandable. Any responsible company engaging in an activity in that State will take those into account in order to get a building permit to build a facility.

I think it would be very helpful also for Congress to talk to the local constituents, and political people at the State and local levels. Congress should instill in them the importance of carrying out these regulations which have been very meticulously passed by the Congress over the past 7 years. Let's start it. The worst that can happen is that we can continue where we are now. We all know that is unacceptable.

Mr. MULLEN. Unfortunately, some of these solutions involve the question of States' rights. I am sure that Congress doesn't want to get into that.

It is the local siting situation that is the most critical, in addition to the finalization of the regulations. Congress could, through oversight, speed up the promulgation of those regulations. That would be a tremendous help.

How would you go about imposing upon States or localities some rules and regulations for siting? I don't know. That is the main problem.

Senator DURENBERGER. Mr. Hayes?

Mr. HAYES. Mr. Chairman, I think that one of the main things that Congress needs to do in this area is—with respect to examining EPA's budget—make sure that EPA does have the funds and the resources necessary to implement these programs.

EPA should not only adopt the regulations they are required to adopt and promulgate, but also should see the regulations through to implementation at the State level. It should work more cooperatively with the States in carrying out the regulations; and should receive feedback from the States and the regulated public on what effect the regulations are having and what changes need to be made, in either the regulations themselves or their implementation. In other words, EPA should carry out the program, not simply lay the direction down and then go on to the next problem. I think this has been one problem with EPA's approach in the past. I think this is becoming more obvious now.

There does not seem to be the kind of follow through resources that EPA needs to administer these programs. The problems in the Federal-State relationships that we have seen have led some people to say the EPA should pull back from these programs. EPA simply does not have the resources it needs to carry these programs out in a constructive fashion. That is an extremely important function that Congress can bring about.

Congress, I think, also needs to increase its oversight at this point to make sure that EPA does carry out its programs and promulgate the regulations as it is required to promulgate them, particularly under RCRA. But I think the budgetary consideration is probably the most important that I would recommend.

Senator DURENBERGER. I started my questions this morning by asking Mrs. Gorsuch some Federal purpose questions concerning the budget. I did this because I knew that sooner or later the gentleman from New York, or somebody else, would come up and tell me just what he told me—which was that the Governor had put all of this off for a couple of years.

I just have to ask myself, and the rest of us have to ask ourselves, the question: "How long do you pour Federal money down into a tube which is going to get cut off at the bottom by people's unwillingness to implement the decision?"

You can blame the regulatory process or the lack of uniformity in definition and so forth only so long. There is a lot of that which should be cleaned up, and maybe—and I suppose I should be saying this off the record—but maybe we should spend our money bribing Federal officials. [Laughter.] Or something like that, to make sure money is being spent in this process and to make sure it is going to happen down there at that level.

I started out talking about research and development, and developing the issues of addressing what happens when the transport tips over as the school bus is passing and recognizing the concerns which the 200 people had at the first meeting. What was it that dwindled that number down to 150 or 100? Maybe, if we put those kinds of experiences together and that kind of research together and then put some money into communicating some of these things—or facilitating the communication—that is a better way to use our resources.

I think that is part of what this hearing was designed to do. It was to find out, if we do have limited resources, where best do you spend those resources to put pressure on the whole system in order to react all the way down to fortify the people in the handling of that process so that they will take the actions which you expect them to take.

I have to admit, besides frustration, I have learned a lot this morning. I think the record will show that all of you have made a very substantial contribution to our understanding of the problem.

We are indebted to all of you.

Thank you very much for being here.

[The prepared statements of Messrs. Mullen, Taub, and Hayes follow:]

National Solid Wastes Management Association

1120 CONNECTICUT AVENUE, N.W. • SUITE 930 • WASHINGTON, D.C. 20036
TELEPHONE (202) 659-4613

EUGENE J. WINGERTER
EXECUTIVE DIRECTOR

Statement before the
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS
of the
COMMITTEE ON GOVERNMENTAL AFFAIRS
U.S. Senate

on

STATE IMPLEMENTATION OF RCRA

Presented by

HUGH MULLEN

Deputy Chairman, Institute of Chemical Waste Management
National Solid Wastes Management Association
and
Director, Government Relations
Conversion Systems, Inc.

November 24, 1981

- COLLECTION COMMITTEE
- INSTITUTE OF CHEMICAL WASTE MANAGEMENT
- INSTITUTE OF RESOURCE RECOVERY
- INSTITUTE OF WASTE EQUIPMENT DISTRIBUTORS
- INSTITUTE OF WASTE TECHNOLOGY
- LANDFILL COMMITTEE
- WASTE EQUIPMENT MANUFACTURERS INSTITUTE

Mr. Chairman and members of the Committee, my name is Hugh Mullen and I serve as Deputy Chairman of the Institute of Chemical Waste Management (ICWM) of the National Solid Wastes Management Association (NSWMA), as well as Director of Government Relations for Conversion Systems, Inc., headquartered in Horsham, Pennsylvania. Conversion Systems is one of the nation's leading hazardous waste service companies. Our company operates three facilities in two states.

Other member companies of the Institute of Chemical Waste Management are likewise engaged in providing treatment and disposal services for hazardous wastes generated by American industries. As distinct from those industries which generate wastes and manage them themselves on-site, members of the Institute of Chemical Waste Management accept hazardous wastes for treatment and disposal from the vast spectrum of industrial generators, many of whom lack the necessary expertise or suitable facilities for proper management of their own wastes. The growth of the chemical waste service industry has been coincident to implementation of the federal hazardous waste program created by the Resource Conservation and Recovery Act of 1976 (RCRA).

The Institute of Chemical Waste Management is an arm of the National Solid Wastes Management Association, the national voice of the waste management industry. Composed of more than 2,000 member waste service firms, NSWMA has actively supported a responsible national program for proper hazardous waste management. We have worked closely with members and staff of both congressional authorizing committees and the EPA and with the state legislative and regulatory bodies in developing a workable hazardous waste management program in the United States. Our involvement with RCRA predates passage of the statute in 1976 and we are among those parties involved in litigation with EPA over both the timing and the content of regulations implementing the program.

NSWMA has steadfastly supported implementation of a national hazardous waste management program at the state level. The federal government must provide leadership. The program must be characterized by relatively uniform standards of acceptable practices for waste handling by waste generators, transporters and treatment, storage and disposal facility operators. There should be a uniform national manifest, for example, to facilitate tracking of hazardous wastes "cradle to grave." Similarly, acceptable technology should be reflected in relatively uniform national design-based performance standards. Other requirements like financial responsibility should also be imposed by federal regulation. Federal oversight should assure that no barriers are allowed to impede interstate shipments of hazardous wastes.

On the other hand, states are in a far better position to understand exactly how national design-based performance standards are translated into acceptable permits. And, state-level enforcement offers assurances that regulators are not distant and detached and uninterested in conciliatory compliance. NSWMA favors federal standards with state implementation and enforcement.

Let me turn my attention to the questions posed by Chairman Durenberger in his invitation to appear before you today. Under Phase I of RCRA in force today, half of the states have received interim authorization to operate their own "substantially equivalent" programs while the remainder have generally entered into cooperative agreements with US EPA to enforce the federal standards. We should recognize that there will always be differences between states which have authorization to run their own programs and states regulated under the federal rules because RCRA permits states to be more stringent in their requirements than the federal standards.

Recognizing the validity of allowing states to supplement federal standards with more stringent requirements, we are concerned over several examples of states enacting standards which go beyond the federal standards with no basis in technology or science. In this case, stringency only serves to frustrate another legitimate objective of RCRA, namely, replacing older facilities with newer, sounder ones.

We are even more concerned, however, that the program allows irrelevant distinctions in setting the rules for on-site generator-operated treatment and disposal facilities and off-site, commercial facilities. About 80% of the 50-60 million metric tons of hazardous wastes generated annually are managed on-site. The facilities perform the same functions, handle the same classes of waste, represent the same potential threat to public health and the environment; yet EPA has allowed some states to legislatively discriminate between substantive standards for on- and off-site facilities and still accept their programs as "substantially equivalent." We worry, as well, that enforcement efforts may be biased, effectively holding on-site facilities to a lesser standard of care in assuring proper facility design and operation.

The federal regulations, commendably, recognize that environmental standards are no respecter of ownership or proximity to waste generation; they are related to a potential for adverse environmental or public health impacts by the waste handling practices themselves. NSWMA strongly supports uniform standards for all handlers of hazardous wastes based solely on the relative threat to the public which might be caused through mismanagement of these wastes. Indeed, this is the statutory mandate of Section 3004 of RCRA.

We welcome this regulatory oversight as a means of assuring the public that our facilities are, indeed, properly operated and environmentally advantageous. We are concerned, however, that inadequate resources are being directed to secure compliance for on-site facilities, particularly in those of the interim authorization states which have taken advantage of the "substantially equivalent" loophole to legislate discriminations between commercial and on-site facilities.

Many of the states which have not received interim authorization have their own state hazardous waste statutes. Often, these statutes impose procedures or substantive standards at variance with the federal program. Having to comply with dual regulatory programs would seem to represent a significant obstacle to industries operating in those states. In practical terms, however, this has not proved to be the case. As far as we know, every state which has not qualified for interim authorization has entered into a cooperative agreement with EPA to enforce the federal program. Thus, the same state regulator is enforcing both sets of standards. An inspector visiting a facility is able to ascertain compliance with both the state and federal programs. Inasmuch as any state requirement which is in conflict or contradictory to the federal standard is superseded by the federal standard, the state inspectors seem to have little difficulty in conducting combined inspections.

RCRA was signed into law by President Ford on October 21, 1976. Thus, it is now five years and one month since the statute was enacted and we still await permanent standards for land disposal of hazardous wastes, the most prevalent and frequently most cost-effective disposal option. Final standards for surface impoundments and incinerators apply only to new facilities. The lack of permanent federal standards presents severe difficulties for facility operators. The failure of EPA to develop these standards more quickly has also placed states at a serious loss in fashioning their state programs to be in full compliance with the federal program. There have been many zigs and zags in federal proposals, so much so that states with legislatures which meet only once every two years have found it impossible to legislate a program which will satisfy EPA standards of "substantial equivalency" much less full equivalency. The uncertainty and delays in the federal rulemaking process have had a ripple effect that will prevent states from bringing their programs on-line in a timely manner.

The temporary land disposal regulations, though badly needed as the basis for permitting construction and operation of necessary additional capacity, are rules so vague and ill-defined that they cannot serve as final rules. On November 13, Judge Gerhardt Gesell of the US District Court for the District of Columbia ordered EPA to promulgate its final land disposal regulations by February 1, 1982. Viewed in the perspective of the more than five years' delay already experienced, this court-mandated deadline would seem reasonable; however, we are uncertain whether EPA has the necessary resources to produce technologically-realistic regulations by that date.

The delays have also severely handicapped the permitting of new facilities. For example, in one case, an application, originally filed for a state permit and deemed acceptable, was delayed due to local opposition. The delay prevented the facility from obtaining interim status and the application was refiled under Part 265 of the federal regulations. Before it could be acted upon, Part 267 of the regulations was promulgated resulting in a nine-page request for additional information. Development of that information will cost several hundred thousand dollars. Perhaps EPA will issue the final regulations, Part 264, by next February 1; at this time, however, there is no way of knowing whether information requested will satisfy the final regulations. It is important to point out that no new hazardous waste landfill has been permitted in the eastern United States in the past two years.

While it is essential that the regulations be finalized at the earliest practical moment, it is also true that regulations are just so many more pages of paper unless they can be translated into a workable program and facilitate siting of additional modern hazardous waste management facilities to replace present practices deemed by Congress to be inadequate. Delays in implementing the federal program have undermined public confidence in the federal hazardous waste management program and the credibility of the US EPA. This is probably the most serious and distressing development associated with the tangle of red tape in the EPA. The public confusion and lack of confidence in EPA translates directly into frustration on the part of our industry in trying to persuade local communities to host the new generation of RCRA-designed hazardous waste management facilities. Unless and until these new facilities are brought on-line, the nation will have no alternatives to the continued diversion of hazardous wastes into facilities constructed to meet pre-RCRA standards, if they were regulated at all.

The federal government has an important and essential role in funding the national hazardous waste management program. After all, Congress directed that state programs be "equivalent" to the federal program and the US EPA is pledged to operate, in toto, the federal hazardous waste program in those states which do not receive federal authorization. Thus, it is eminently logical for the federal government to provide grant assistance to states for program management. These funds are today inadequate to staff professional state regulatory efforts and Congress should consider additional appropriations for state program support to prevent the proliferation of a crazy quilt of local user charges and taxes which distort the waste disposal marketplace. The federal government also should continue the program under the Intergovernmental Personnel Act which provides for an exchange of personnel between state and federal governments, academia and private industry.

Your Subcommittee has already conducted hearings similar to this one investigating state implementation of the Clean Air Act and the Occupational Safety and Health Act. If we can draw any clear lessons from RCRA to supplement your observations on the common theme of state implementation, they would be as follows:

> First, the federal government should provide clear signals to states who are expected to implement the program. The federal government should issue its rules in a timely manner and make only those changes which are proved to be necessary.
>
> Second, the federal government should not look on state implementation of federal requirements as a cheap way to get the job done. If the job is to be done and done well, it will be necessary for the federal government to spend just as much money as if it were to staff a federal agency to do the job directly. The advantage, of course, is that the federal bureaucracy need not grow

nearly as much and the program can be more effectively implemented at the state level.

On behalf of the waste service industry, let me express our appreciation for this opportunity to share our thoughts on this important subject with your Subcommittee. I would be pleased to respond to any questions which you might have.

Thank you.

STATEMENT OF STEVEN I. TAUB
VICE PRESIDENT OF STABLEX CORPORATION
BEFORE THE HEARING OF THE SENATE SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS OF THE COMMITTEE ON GOVERNMENT AFFAIRS

November 24, 1981

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to testify before your Subcommittee on the subject of State Implementation of the United States Environmental Protection Agency's Hazardous Waste Programs.

As the principal executive in our company with responsibility for obtaining all necessary federal and state regulatory approvals, I have had extensive personal involvement with virtually all phases of the regulatory process affecting the generation, treatment, and disposal of solid and hazardous wastes. Our company offers a unique process to convert inorganic hazardous wastes into an environmentally inert, rock-like material which can be placed in or on the ground in an environmentally safe manner and in many cases can be used for land reclamation. Stablex Corporation (hereinafter referred to as "Stablex") has spent several million dollars in the past three years to secure the necessary state and federal regulatory approvals to build facilities in Michigan, New Hampshire, and Texas. Because of what we view as a few serious flaws in the federal and state regulatory matrix, we have been barred from commencing operation of any of the modern technologically advanced, hazardous waste treatment facilities intended for these sites. In the meantime, hazardous wastes of all types continue to be disposed at outdated landfills, many of which are causing serious contamination of ground water supplies and other dangerous environmental problems. While the regulatory agencies continue to hold up on issuing Stablex the necessary approvals to move forward with its advanced technology, they have done little to stop the disposal of hazardous wastes at outdated facilities throughout the United States, many of which are inefficient. This is one dilemma I will address today.

Before addressing in more detail our concerns about certain weaknesses in the regulatory system and recommendations for improvement, I thought it would be helpful to describe our unique process. I know you have a busy schedule and I will give you a brief summary here. I would be pleased to make more complete information about the company available to you.

Environmentally Safe Conversion of Wastes

Stablex Corporation employs a unique patented technology known as SEALOSAFE (service mark) to convert inorganic industrial wastes, including several wastes which have been listed as hazardous by EPA, to an environmentally inert, synthetic, rock-like product which is called

STABLEX." A Michigan court, after careful consideration of the testimony of several expert witnesses and laboratory data, ruled that STABLEX is "not a waste" -- that it is "noxious free, non-toxic, non-inflammable, non-combustible . . .*/

STABLEX results from a "crystal capture" mechanism which combines two inter-dependent reactions. First, contaminants present in solution as ions react with carefully selected process chemicals to form strong chemical bonds. Second, the contaminants present in insoluble form are fixed in a lattice and thus prevented from escaping into the environment. Because of the hard, impervious nature of the STABLEX product, it may be placed into excavations such as abandoned quarries to reclaim the land to its original contours without causing any of the typical leachate problems associated with most landfills. In short, STABLEX need not be disposed of in a landfill constructed to prevent leaching because the STABLEX material itself does not leach harmful amounts of contaminants.

The Initial Regulatory Hurdle

Under the existing EPA regulations, the STABLEX material is automatically deemed to be a hazardous waste until Stablex, by means of a so-called delisting petitions (See 40 C.F.R. §260.22), obtains a ruling from EPA that the material is not a hazardous waste Such a delisting is essential to Stablex if the benefits of the process are to be realized throughout the United States. If Stablex is considered to be a hazardous waste, the Stablex material must be disposed of in a landfill with a complete liner and leachate collection system, which is required for new landfills receiving untreated hazardous wastes.

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*/ Township of Groveland v. Jennings, No. 75-132-253 (Oakland County Michigan Circuit Court Judge Beer) (April 1, 1980).

The Stablex process is economically competitive with all existing methods in the disposition of treatable, potentially toxic and hazardous wastes. Stablex requires a high level of capital investment for the treatment process, an expense avoided by ordinary landfills. If Stablex is also required to prepare the placement area in the same manner as a hazardous waste landfill, this will significantly increase costs. The resultant added economic burden on Stablex's customers could discourage them from using the modern Stablex process, contrary to their desire to use the best available technology Such a result is clearly undesirable, because ordinary landfill techniques do not permanently eliminate the problems of hazardous wastes -- they simply use the ground as a storage area from which future problems can develop.

The Resource Conservation and Recovery Act and EPA Delistings

On August 13, 1980 Stablex filed a delisting petition for the STABLEX to be produced by its hazardous waste treatment facility being constructed in Groveland Township, Oakland County, Michigan. On November 25, 1980, the EPA published a grant of a temporary exclusion for Stablex's Michigan project (45 Fed. Reg. 78544). Stablex filed a virtually identical petition for a facility the company proposes to construct at Hookset, New Hampshire. We had expected EPA to expeditiously grant the delisting for the Hookset site because the Agency had already completed a an exhaustive review of the Michigan project. We were sadly disappointed. Because the State of New Hampshire has different concerns than the State of Michigan, EPA has not yet acted on our New Hampshire delisting application even though the technology, which should be EPA's sole consideration, is identical to the Michigan project for which EPA has already issued a temporary delisting.

I could spend several hours talking to you about our frustrations with the EPA delisting process, but it is my understanding that the focus of today's hearing is on the role of the states in implementing and enforcing those regulatory requirements which have been delegated to them by EPA. Accordingly, with this background, I turn now to three of the questions identified by the Chairman.

Issues Identified by the Committee

A. EPA has not required state programs to be "substantially equivalent."

The Chairman has identified the issue as follows, "Under RCRA, states are only required to be 'substantially equivalent' to the federal program during interim authorization. Have your organization's members experienced inconsistent or conflicting standards between states operating with interim authorization and states where federal standards prevail? If so, what has been the impact of the differences?"

The answer, very simply, is that our company has experienced substantial inconsistencies between federal and states' standards. We have suffered a direct, immediate, and enormous adverse impact because of these differences. The adverse results are not limited to Stablex. It is our impression that no new technologically advanced facility has been able to secure the necessary permits and begin operation of a facility for treating hazardous wastes from both EPA and the pertinent state governments. Unless EPA is directed to require state programs to be virtually equivalent to the federal programs, there is a substantial possibility that no new hazardous waste treatment facilities will be constructed in the U.S. The devastating result is that enormous quantities of hazardous wastes will continue to be disposed of at inadequate, old, environmentally unsafe facilities.

Let's examine our experience in New Hampshire as an illustration of the problems caused by inconsistent state and federal regulatory requirements. The State of New Hampshire appears to be intent on requiring tests other than those required by EPA's RCRA regulations for the purpose of delisting the STABLEX material. If this is the case, and we have every reason to believe that it is, the state program is not consistent with the federal regulations for identifying, listing, and delisting hazardous wastes. The confusion about the status of our delisting is compounded by the fact that more than one state agency is involved in the delisting procedure at the state level. Stablex has retained highly-qualified professional engineers to prepare the appropriate permit application documents and scientists to report to state and federal officials about the Stablex process. To date, however, New Hampshire continues to ask for more and more data.

While Stablex understands the need for regulatory officials to prudently analyze new hazardous waste treatment facilities, it is our strong impression that some New Hampshire regulatory officials are using the regulatory process to block Stablex's entry into New Hampshire, regardless of the scientific merit of our proposal. In the absence of federal regulations binding upon the states to limit their inquiries, there is no way to prevent state and local governments from killing a new project by suffocating it with paperwork requirements and ~~the~~ inherent time delays.

On September 18, 1981, we sent the attached letter to Susan Hanamoto, an official from EPA Region I in Boston with responsibility for coordinating the RCRA program for the State of New Hampshire. Our letter commented on a public notice in the August 14, 1981 Federal Register seeking comments on New Hampshire's application for Phase I interim authorization for taking over the RCRA hazardous waste program. We raised significant questions about New Hampshire's eligibility for undertaking the program. Understandably, we were surprised and extremely disappointed when EPA granted New Hampshire Phase I interim authorization and issued a notice in the Federal Register stating "no issues were raised by commentors on New Hampshire's application." (46 Fed. Reg. 54544). EPA's action on New Hampshire's application illustrates the Agency's failure to carefully consider the equivalence of state programs, for reasons described in more detail in my letter to EPA dated November 17, 1981, which has been distributed to this Committee.

We, therefore, are stressing the argument that state programs should be both substantially equivalent and consistent with the federal program. For example, during interim authorization, state programs are only required to be substantially equivalent, and will not be required to be consistent until the state is granted final i.e. permanent authorization. In New Hampshire's case this is several years away. Consequently, this period of confusion will delay technologically advanced projects by several years and substantially add to the cost of the project.

Based on our experience this situation is easily rectified by clarifying the states' requirements.

B. Unauthorized State Programs Also Defeat the National Interest in Promoting Sound Hazardous Waste Management Techniques

The Chairman of this Subcommittee has asked whether hazardous waste facility operators experience problems of dual enforcement in states which have not yet received interim authorization. The answer is yes. The problems in such situations are even worse than in those states which have at least made some effort to be substantially equivalent to the federal programs.

C. General Principles of Federal-State Regulation

It is quite obvious that the current EPA, perhaps prompted by the 1980 Amendments to the Solid Waste Disposal

Act,[*/] has abdicated its primary responsibility for regulating hazardous wastes. The various state governments, with varying degrees of enthusiam and expertise, are filling the vacuum created by EPA's withdrawal with regulations that vary dramatically from state to state. These differing requirements significantly decrease the desirability of operating the multi-state technologically-advanced comprehensive hazardous waste treatment program which our company seeks to develop.

Stablex Corporation is a responsible company which seeks to comply to the letter with all applicable laws and regulations. It has been extremely difficult just to follow EPA's constantly changing regulatory program and it is almost impossible to keep abreast of laws and regulations of all 50 states. Congress should revise sections 3006 and 3009 of the Act to require greater consistency among all state programs with the federal program and to prevent unnecessarily stringent requirements which bear no reasonable relationship to environmental protection.

[*/] Section 3009 was amended in 1980 to provide that nothing in the Act shall be construed to prohibit any State or political subdivision from imposing more stringent requirements than EPA.

Conclusion

Stablex Corporation is most desirous of constructing and operating hazardous waste treatment facilities in several states throughout the nation. Use of our technologically advanced facilities for converting hazardous waste into an inert environmentally safe material will be in the best interests of the nation. Stablex Corporation recognizes the need for review and supervision by state authorities of hazardous waste facilities to insure that they are operated in a proper manner. In this regard, Stablex has and will continue to cooperate fully with all requests for appropriate information to insure the safety and effectiveness of its process.

At the same time, however, it is important to recognize that the introduction of a responsible hazardous waste treatment facility, such as Stablex, may be obstructed for arbitrary and personal reasons under the guise of environmental protection, which bear no relationship to the RCRA mandate to protect public health and the environment. If EPA is to comply with its mandate under RCRA to insure an adequate supply of environmentally-safe hazardous waste facilities throughout the nation, it must carefully examine applications filed by state authorities for interim authorization to insure that the state programs will be carried out in an impartial, objective and fair manner which will allow for the construction of environmentally safe hazardous waste treatment processes.

Delegation of RCRA authority to states should not foster the already serious problem of the "not in my backyard syndrome" evidenced by the virtual halt to construction of new hazardous waste facilities anywhere in the U.S.

I thank you for the opportunity of delivering these remarks to you today. I would be pleased to answer any questions you may have.

Stablex Corporation
Suite 110, Two Radnor Corporate Center
Radnor, Pennsylvania 19087 (215)688-3131 Tlx. 834477

SIT-928-81

17 November 1981

Ms. Susan L. Hanamoto
New Hampshire State Coordinator
Waste Management Branch
U.S. EPA Region I
JFK Federal Building
Boston, MA 02203

Re: New Hampshire Application for Phase I Interim Authorization of the State Hazardous Waste Management Program

Dear Ms. Hanamoto:

Thank you for meeting with Gregg Franklin, Larry McCoy, and Attorney Devine on November 9, 1981. As Mr. Franklin expressed, Stablex Corporation is concerned that the Environmental Protection Agency neglected to respond to, or even acknowledge, receipt of the September 18, 1981 comment filed by Stablex concerning the New Hampshire Application for Phase I Interim Authorization. It was our understanding that our comment focused on a seminal issue in interim authorization, that being the issue of consistency between the State and Federal Hazardous Waste Management programs. Our comment did not, per se, recommend against Phase I Interim Authorization for New Hampshire. Rather, it requested a response concerning both the permitting and delisting procedures apparently being employed by those responsible for administering the N. H. Hazardous Waste Management Program.

From our discussions, it is clear that the Agency considered these comments more pertinent to Phase II Authorization, and specifically to the permitting process in the State of New Hampshire. Nevertheless, we see this distinction between Phase I and Phase II Interim Authorization as somewhat unrealistic in terms of Stablex Corporation's present posture in New Hampshire. We now have pending before both the EPA and the New Hampshire Bureau of Solid Waste Management an application for a permit to construct and otherwise operate a hazardous waste management facility and land reclamation center in the Town of Hooksett, New Hampshire. We have applied for a temporary delisting with the EPA, and have discussed delisting procedures with the State of New Hampshire. Delisting is an integral part of the identification and listing of hazardous wastes, which in itself is the principal function of Phase I Interim Authorization. Accordingly, whatever tests the State seeks to employ in the delisting procedure, this should be considered by the EPA in granting Phase I Authorization.

We are concerned that the State of New Hampshire intends to require tests other than those authorized by the RCRA Regulations for purposes of delisting the STABLEX™ product. If this is the case, the State program is not consistent with the Federal identification and delisting program.

It is also our understanding that the Agency has not, as yet, promulgated official definition of the term "consistency". In this regard, however, please bear in mind that we in no fashion seek to criticize the New Hampshire Hazardous Waste Regulations or the Bureau of Solid Waste Management. Rather, our fundamental problem exists because it remains unclear whether the Bureau of Solid Waste Management or, in the alternative, the Water Supply & Pollution Control Commission is in charge of the delisting procedure. The Water Supply & Pollution Control Commission, for example, has made it clear in informal discussions that it intends to apply tests other than those sanctioned by the Environmental Protection Agency for determining the hazardousness or non-hazardousness of the STABLEX product. While such a procedure might have some validity for purposes of a bifurcated review between Hazardous Waste personnel and Ground Water Supply personnel, it has no place in listing and delisting procedures under the Hazardous Waste Regulations. This is the area in which we are seeking comment and direction from the Environmental Protection Agency.

Just as the EPA has a duty to regulate and supervise generators, storers, transporters and treaters of hazardous waste, it has a duty to assist legitimate treatment technologies in the permitting proces in any state of this Union. Stablex Corporation wishes to work in close cooperation with the EPA, the Bureau of Solid Waste Management, and the Water Supply & Control Commission. Our only request is that the rules be the same, and that fair and impartial treatment be given to our application, to any request for delisting, and to all other aspects of the proposed facility. It is our request that the Environmental Protection Agency respond to us in writing as to their reasons for not previously responding to our comments. Please be assured that we seek only clarification of the various roles the administrations at both levels of government are to play.

Your continued assistance and cooperation are greatly appreciated.

Very truly yours,

Steven I. Taub
Vice President
Technical Services

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Testimony of Environmental Defense Fund
on
State Implementation of the Hazardous Waste Management Program Under the Resource Conservation and Recovery Act
Before the
United States Senate Committee on Governmental Affairs,
Subcommittee on Intergovernmental Relations
November 24, 1981

Good morning, Mr. Chairman and members of the subcommittee. I am Timothy G. Hayes, Virginia Project Director for the Environmental Defense Fund. With me this morning is David Lennett, of EDF's Washington, D. C. office. Both Dave and I are attorneys on EDF's Toxics Program staff.

EDF is a national, not-for-profit, public interest environmental organization, with more than 45,000 members. We have been extensively involved for the past several years in litigation, administrative action and effective implementation of the RCRA hazardous waste management program. Our interest in this area naturally extends to state implementation, because the states have, necessarily and properly, been given an indispensible role in the program, in partnership with the federal government. Through the EDF Virginia Project, located in Richmond, we have been involved since mid-1980 in the development and implementation of Virginia's hazardous waste management program and regulations, and in the control of toxic materials under state law and other federal statutes such as the Clean Water Act.

From 1976 until I joined the EDF staff in June 1980, I was an Assistant Attorney General in the Environmental Section of the Virginia Attorney General's Office. My primary responsibilities there involved the provision of legal support to the State Water Control Board in implementation and enforcement of the State Water Control Law and the NPDES program, which Virginia assumed in 1975. In that capacity as well as in my present position I have had the opportunity to observe, at least in my state, the effectiveness of the combined federal/state approach to implementation of RCRA and the Clean Water Act, which of course is the approach contained in several other federal environmental statutes as well.

Virginia received Phase I authorization under RCRA only a few weeks ago. Many of my observations today are based on experience with administration of the Clean Water Act, because we have not had much experience with RCRA. But I think that the problems I will discuss are generic. Development of the Virginia hazardous waste program began in 1979 with adoption of major changes to the State Code, bringing hazardous waste activities under the regulatory purview of the State Department of Health. Prior to the 1979 Code amendments, hazardous waste management was essentially unregulated at the state level, this despite the fact that Virginia industries generate a substantial quantity of hazardous wastes, putting the State, by one estimate, among the top twelve in the country. The State's hazardous waste management regulations became effective in May 1981; they are in most respects at least equivalent to the requirements of the federal regulations. They have not been enforced pending receipt of interim authorization. Therefore, we have not yet had the experience necessary to determine the program's effectiveness. However, two assertions can safely be made. First, without the federal initiative, it is doubtful that we would yet have a comprehensive hazardous waste management program in Virginia; and second, without development and continued federal insistence on minimum standards for state implementation, together with federal assistance, particularly in the technical area, the program will not move forward.

The same is true for other programs such as those under the Clean Water Act. This is not to place any aspersions upon Virginia's government or upon State government in general; the states, as I will discuss shortly, are absolutely indispensible to any effective program for the control of pollution and protection of our environment. But the cardinal fact that was recognized by Congress in enacting the major environmental statutes of the 1970's was that environmental protection must be a "federal" function: meaning that it requires the active and appropriate participation of all elements of the federal system.

Because of the political and economic realities under which different levels of government operate, there are some things in the environmental protection field that only the federal government can do, and some that only the states can do. The fundamental fallacy in the current Administration's approach is their apparent assumption that by cutting back on federal activities and returning certain functions such as standard-setting to state governments, they are restoring some mythical "balance" to the system. The fact is that they are setting back our progress toward creation of an appropriate balance. The major federal environmental initiatives in the 1970's did not represent, for the most part, a usurpation of state authority; they represented, instead, a long overdue assumption of federal responsibility, with abundant and appropriate recognition of the state role. Only nationally-mandated standards and requirements can work in a system with 50 sovereign entities, all under competing and sometimes conflicting economic and political pressures. Only the states can carry out the flexible, "close-to-home" approach needed to impose these standards on the myriad sources of pollution in this country.

During the near-decade that the federal and state governments have been engaged in implementing this approach, it has become obvious that Congress was on the right track--that the approach works. It is also obvious that it can be made to work a lot better. But it is not at all obvious that delaying or cutting back on the federal effort in areas appropriately within the federal government's responsibility is justified by anything in that record.

The dissatisfactions that we have seen in the area of federal/state relations during the implementation of these programs are not, fundamentally, the result of flaws in the concept, but rather result from flaws in execution caused in part by intergovernmental friction and in part by failure to carry out Congressionally-mandated functions. A far more sophisticated response than federal retrenchment is needed to correct these problems.

With respect to the first problem--intergovernmental friction--it was to be expected that the creation of an active federal presence would cause resistance and resentment among many state environmental regulators. From my own experience in Virginia, I know a number of State bureaucrats who resent in principle what they consider federal intrusion into their territory. (Of course, we have some justifiable historical reasons for that feeling, dating back to a certain unpleasantness in the 1860's.) To the extent that this resentment is directed toward the idea of federally-mandated standards and deadlines, they should learn to live with it. Experience has shown that state discretion in those matters does not work.

In another area, however--that of implementation and enforcement-- some of the resentment can be understood. In my experience with the State government in administration of the NPDES program, it sometimes seemed as though the federal officials with whom we worked were overly concerned with the minute particulars of State program administration. Even though they may have had their own reasons--administrative convenience or whatever-- for imposing federal uniform requirements on such things as reporting forms, state officials naturally got the impression that they were considered as adjuncts of EPA. The threat of withholding federal grant funds for failure to follow EPA's ideas on how the State program should be run was used in an overly heavy-handed fashion and certainly did not promote benevolent attitudes on the part of State officials.

Realizing EPA's concerns that states might not adequately implement their programs without close supervision, it is nonetheless true that Congress intended the states to have the primary role in implementation. It was not the intent to have the states be agents of the federal government. In our opinion, there is an urgent need for EPA to direct its efforts toward development of programs that allow the states more flexibility in implementation while assuring that the national goals and standards are met. In short, EPA should be more concerned with encouraging state approaches that work, not necessarily those that fit EPA's concept of an acceptable bureaucratic model. For example, most if not all states are under the same kinds of budgetary constraints and pressures to reduce regulatory profiles that the federal government faces. Where state proposals based on nonregulatory concepts or innovative regulatory approaches can be used to meet federal standards, EPA should be open-minded in reviewing the state proposal and not reject it simply because it does not conform to the EPA model.

EPA has also been heavy-handed in dealing with state enforcement actions. EPA has, at times, stepped into state enforcement proceedings at the last minute or without fully understanding the issues involved. However, EPA must retain authority to enforce federal standards where state enforcement action is not adequate.

All of these suggestions will require a greater qualitative, if not quantitative, effort on EPA's part. Simply turning over more responsibility to the states without a close, cooperative and supportive effort to determine that a given state approach will achieve national goals will result in confusion, inertia and loss of ground.

The second area I mentioned--the failure of EPA to carry out its Congressionally-mandated functions--is one that has caused chronic problems in the state implementation of RCRA and other environmental statutes. The proposed cutbacks in EPA programs and resources, and delays in the issuance of necessary regulations, will, in our opinion, severely aggravate this problem.

Delays in The Hazardous Waste Regulatory Program

As you already know, the Resource Conservation and Recovery Act (RCRA) is the enabling statute for the hazardous waste regulatory program, and it was enacted in October of 1976. Before RCRA was enacted, the regulation of hazardous waste disposal was generally left to the states, and in many jurisdictions waste disposal was virtually unregulated. Subtitle C of RCRA created a so-called "cradle to grave" regulatory program, requiring the Environmental Protection Agency (EPA) to develop minimum standards to protect human health and the environment and to delegate the implementation of the control effort to states with approved programs.

The statute mandated that EPA promulgate the necessary regulations within 18 months of enactment, or April of 1978. But insufficient resources to perform EPA's statutory responsibilities in this area were requested by the Carter Administration.

Since the regulations had not even been proposed by April of 1978 when the statutory deadline passed, EDF and several other organizations filed suit in U.S. District Court seeking promulgation of the regulations. See State of Illinois v. Costle, No. 78-1689 and consolidated cases (D.D.C). Within two months, the Court found

EPA to be in violation of the law. From that point in November of 1978 to this day, the efforts of EDF and the Court have been directed at encouraging, prodding, and cajoling the Agency to comply with RCRA's mandate at the earliest possible date.

In December 1978, EPA proposed a schedule which required that all the hazardous waste regulations be finalized by December 31, 1979. The court adopted this schedule, and also required EPA to file with the court quarterly progress reports. But in June 1979, EPA Administrator Douglas Costle informed the court that he was uncertain whether the December 1979 deadline could be met. By October 1979 no uncertainty remained. In the third quarterly report to the court, EPA proposed a new schedule calling for February and April 1980 deadlines for most of the regulations. In a subsequent letter to the Senate Environment and Public Works Committee, the schedule was again revised to reflect a Fall 1980 deadline for issuance of treatment, storage, and disposal facility standards. Soon thereafter, this revised schedule was adopted by the court.

In February of 1980, the first set of regulations was promulgated. These regulations primarily covered generator and transporter requirements.

In May of 1980, regulations identifying particular wastes as hazardous, minimal requirements for state programs, and the interim status standards for waste management facilities were promulgated.

In January of 1981, final standards for tanks, piles and containers; storage surface impoundments (pits, ponds and lagoons); incinerators; and crucial financial responsibility regulations were issued.

Thus, except for the final standards governing land disposal facilities (i.e. landfills), EPA had largely met the second judicially sanctioned schedule for promulgation. The effort encompassed 4-1/4 years, numerous congressional oversight hearings, thousands of public comments, a series of public hearings, and two court orders.

However, during the last six months it has become clear that we are no longer moving forward in protecting public health and the environment from the mismanagement of hazardous waste. In fact, we are moving backwards.

To illustrate this point, I'd like to catalog some of the events over the past six months concerning EPA's actions under RCRA. Individually, these actions are deplorable in themselves. Taken together, they evidence a concerted effort on the part of EPA to return to the days when hazardous waste disposal was essentially unregulated.

1. Regulations Governing Surface storage Impoundments and Incinerators.

Let me begin with the issue we have most recently been concerned with: EPA's administrative stay and likely suspension of RCRA regulations concerning hazardous waste surface storage impoundments and incinerators. These regulations, as stated above, were promulgated pursuant to court order. The surface storage impoundment regulations were promulgated on January 12, 1981. These regulations set a standard of total containment for new and existing facilities of this kind. On January 23, 1981, regulations requiring 99.99% destruction and removal for new and existing incinerators were promulgated. Both sets of regulations were to have become effective six months later. However, on June 26, Mrs. Gorsuch sent a letter to OMB Director Stockman stating that she had reviewed the options with regard to these regulations and had decided to move toward suspending them as they apply to over 800 existing incinerators and several thousand surface storage impoundments. Gorsuch concluded in the letter that an automatic suspension of the regulations would probably be illegal. Thus she proposed that within two weeks she would commence rulemaking to suspend the regulations. The proposed suspension was not sent to the *Federal Register* until October 13, 1981, and there is no indication as to when the rulemaking will be completed. Meanwhile, EPA published a *Federal Register* notice in late July announcing its intention not to process permits pursuant to the regulations in the interim. Executive Order 12291 is cited as authority for this action in this *Federal Register* notice. The October 13 proposal for suspension reiterates EPA's policy of not processing permits.

This failure to process permits amounts to an unauthorized administrative stay of the regulations, since they are no longer being applied to any existing incinerators or surface storage impoundments. Under RCRA, final standards are not applied automatically to particular facilities. Rather, EPA must request a permit application from an owner/operator to apply the final standards. If no applications are requested and no permits are processed, the regulations are meaningless for existing facilities. Consequently, the only requirements that now apply to these facilities are the interim status standards -- largely administrative requirements not designed to include technical, design, construction, and operating standards necessary to protect human health and the environment.[1] In the case of incinerators, this means that the operator of an incinerator must hourly go outside and look at the plume to see what color it is. Not much more is required.

This administrative stay of the regulations was undertaken by EPA based on industry assertions that it would be too costly to comply with the regulations. Our examination of documents submitted by industry on the need for regulatory relief as to existing facilities reveals that there is little data supporting its conclusory statement that existing facilities cannot meet the standards as they were promulgated in January. According to the Federal Register notice and other EPA documents, if the regulations are suspended, replacement regulations will not be promulgated until the fall of 1983 at the earliest. This lengthy delay appears to be due in large part to the analysis requirements of E.O. 12291. EPA in carrying out these analyses is purposefully disregarding the exclusion in the Executive Order for actions taken pursuant to court or statutory deadlines. In the meantime, no meaningful controls will be required of these sources.

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[1] See Hazardous Waste Facilities with Interim Status May Be Endangering Public Health and the Environment, GAO, CED-81-158, September 28, 1981, pp. 18-21. See also 45 Fed. Reg. 33159 (May 19, 1980).

2. Insurance Regulations

As part of the court ordered promulgation schedule, EPA promulgated regulations concerning financial responsibility for hazardous waste facilities in January. Part of these regulations required owners/operators of treatment, storage and disposal facilities to purchase and maintain insurance for sudden occurrences (spills, explosions), and owners/operators of surface impoundments, landfills and land treatment facilities to purchase and maintain insurance for non-sudden incidents (groundwater contamination) during the operating life of the facility. Thus, citizens located near a waste management facility would be assured that, at least to some extent, a pool of money is available to compensate them for injury to person or property if a release occurs. The regulations were to be phased in over a three-year period to lessen the burden on the regulated market and to ensure the availability of the necessary policies.

The effective date was to have been July of this year. A Federal Register notice was published postponing the effective date of those regulations until October of this year. EPA recently published another Federal Register notice again delaying the effective date of those regulations until April, 1982. This time, the notice also stated EPA plans to "reevaluate" the insurance requirements. It appears the philosophical justification for this action is that the federal government has no business mandating insurance requirements for private parties. Under the definition of "new federalism," EPA apparently believes only states should deal with insurance. This is a very bad decision and is opposed by, ironically, the National Association of State, County and Municipal Solid Waste Officials. In addition, the regulations are strongly supported by the National Solid Waste Management Association (NSWMA), a trade group representing off-site hazardous waste facilities. They recognize that insurance requirements provide important incentives for better design and operation of hazardous waste facilities, and frankly, that it will be difficult to site facilities without insurance requirements. Federal leadership is absolutely necessary in this area. Some states will not be able to adopt insurance requirements because their enabling legislation prevents them from adopting regulations more stringent than EPA's. Other states will adopt insurance requirements, but they will not be uniform, thus creating a tremendous burden on firms with facilities in more than one state.

3. Permit Requirements

EPA and industry petitioners have signed a consent agreement in litigation concerning the consolidated permit regulations issued in May, 1980. On the three most important issues in the RCRA portion of that litigation, EPA reversed its previous position and for the most part adopted industry's position. The three decisions are the following:

(a) Expansions during interim status. Under the EPA-industry proposal, interim status facilities would be allowed to expand their capacity up to 50% without obtaining a permit from EPA. The term "facility" is defined very broadly to include all types of storage and disposal. As a result, if a facility currently has two incinerators, it would be allowed to build and operate a third new incinerator without prior EPA approval. This allows significant expansions of existing hazardous waste facilities to take place with minimal regard for environmental requirements. This is contrary to Congress' intent that EPA establish a permit system as quickly as possible with standards and requirements for new facilities.

(b) EPA will no longer require preconstruction review for incinerators and surface impoundments. Preconstruction review will only be required for landfills and other land disposal facilities. EPA's justification for suspending preconstruction review for incinerators and surface impoundments is that the location of such facilities is not relevant. Clearly this is not the case, since even under EPA regulation, incinerators are allowed to emit some hazardous pollutants and there will certainly be some violations of the no-discharge rule for impoundments.

(c) Lifetime permits. Under the EPA-industry proposal, a hazardous waste facility would receive a permit for the lifetime of that facility. The requirement currently in the regulations is that the permit be issued for a maximum ten-year period only. The current requirement compels EPA to periodically review the terms and requirements of permits as they are renewed. Under the terms of the settlement, EPA's updating of permits will be largely discretionary.

4. Landfill Regulations

The last major portion of the RCRA regulations yet to be developed is the regulations concerning existing land disposal facilities (i.e., landfills). These are, of course, critical standards since landfilling continues to be a dominant mode of waste disposal and contamination from hazardous waste has been widely documented from this method of disposal. Recently, Administrator Gorsuch requested that the Court extend the deadline for the promulgation of the landfill regulations until October, 1983, a further delay of two years. Until then, existing facilities would only be subject to weak interim status requirements. New facilities may be permitted on a case-by-case basis, but without the benefit of meaningful federal standards. The reason given for this further delay is that EPA has discovered flaws in the several approaches of the previous Administration and feels it must completely reexamine the issue. However, the Court denied the Administrator's request, calling it "shallow" and "incomprehensible," and ordered the regulations promulgated by February 1, 1982.

The Consequences of Delay

EPA's shortcomings in this area cause problems at the state level for several reasons. Failure to promulgate regulations necessary to program implementation--e.g. the land disposal rules under RCRA and toxic effluent limits under the Clean Water Act--makes it practically impossible for states to do anything in those areas. Many states are politically and sometimes statutorily constrained from moving out in front of the federal government in this area. Even without those constraints, most simply do not have the expertise or the resources to spare for such an effort. And why should they? Congress made it clear that this was to be a federal responsibility, and without the discharge of the federal responsibility, the states cannot discharge theirs.

Another reason why EPA cutbacks and holdups will cause problems is that the states depend in many ways on EPA support in developing and implementing their programs. This support can be both positive and negative and comes in various forms: financial, technical, and (perhaps paradoxically) political. An active and visible EPA presence is often necessary to overcome internal political and fiscal obstacles to state action. For example, as I have mentioned, we would probably not be as far along as we are in hazardous waste regulations in Virginia without the federal initiative. I have on several occasions seen the State adopt statutory changes strengthening environmental regulation for the primary reason that EPA would regulate the field otherwise. On the other side of the coin, I have seen where EPA delay and inaction, for example in the Clean Water Act pretreatment and toxic effluent programs, have led the State to adopt inactive postures in those areas as well. This problem becomes worse when federal financial support for implementation is seen by the state as inadequate. There is a prevasive attitude in our state environmental regulatory agencies that if they are going to carry out a program mandated by federal law, the federal government should bear the major share of the cost. This attitude is becoming increasingly dominant now that state budget constraints are forcing cutbacks in the resources available to carry out the agencies' existing duties. The duties of the states to have more voice in how their programs are run does not necessarily connote a desire for a greater share of the burden. In our view, it is simply unrealistic to expect that if EPA puts off development of program requirements, turns over to the states more of the responsibilities that Congress intended EPA to have, and reduces the financial and technical support for state implementation, the states will take up the slack. Some states will, perhaps, but most will not. The positive and negative incentives that Congress intended EPA to provide are absolutely essential. This committee should not underestimate the tendency of EPA cutbacks to reduce, not increase, state level activity.

An example of the kind of EPA action that hinders state implementation of RCRA and hazardous waste management programs is in the recent decision to consider suspending liability insurance requirements for hazardous waste activities. Uniform federal requirements in that area make far more economic and regulatory sense than a 50-state patchwork. The burden imposed on the state regulatory apparatus will no doubt be increased, without any commensurate benefit to the state program. Furthermore, the federal retrenchment in hazardous waste regulation causes increased problems of public confidence in an area already well-acquainted with that problem. The state's ability to site new hazardous waste facilities, for example, is not enhanced by the public perception that standards of design and performance are less than adequate. The lack of public confidence becomes even more serious when EPA cutbacks and delays are played off by special interests at the state level to reduce the state's efforts (the same interests, no doubt, who have urged a federal fallback in order "to let the states do more of the job".)

In closing, I urge the subcommittee to view these programs in terms of the appropriate federal and state roles for each function, and how those roles can best be carried out in ways that fulfill Congress' intent. This can not be done from a starting point that assumes that less federal activity is better. It must, instead, closely examine those areas that have not met expectations, determine the reasons why, and carefully develop improvements. We do not feel that the current approach of "cut first and ask questions later" will succeed in improving protection of the environment and public health under RCRA or any other program. Thank you for this opportunity to testify.

Senator DURENBERGER. The hearing will now adjourn.

[Whereupon, at 12:23 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

FUTURE FUNDING OF STATE SOLID WASTE PROGRAMS UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT

PUBLIC LAW 94-580

A Position Paper Prepared by:

Norman H. Nosenchuck, P.E.
Director, Division of Solid Waste
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233

For:

National Governors' Association
Committee on Natural Resources
and Environmental Management
Subcommittee on the Environment

March 17, 1980

FUTURE FUNDING OF STATE SOLID WASTE PROGRAMS UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT

PUBLIC LAW 94-580

NOTE

The Conclusions and Recommendations embodied in this Position Paper have been endorsed by the Subcommittee on the Environment, National Governors' Association at a meeting in Washington, D.C. on March 17, 1980.

FUTURE FUNDING OF STATE SOLID WASTE PROGRAMS UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT
PUBLIC LAW 94-580

I. Executive Summary

This position paper was prepared by the Subcommittee on the Environment of the National Governors' Association's (NGA) Committee on Natural Resources and Environmental Management.

At a time when states are grappling with mounting solid waste problems, it is reported that funding under the Resource Conservation and Recovery Act (RCRA) will be greatly reduced or even phased out during the next three years.

Faced with this grim possibility, the National Governors' Association decided to poll the states to assess what the individual as well as collective results would be if RCRA funding is phased out over the next three years (see Appendices A and B). As a result of its national poll of State solid waste program officials, the Association found that:

- The majority of states are heavily dependent upon RCRA funding for continued operation of State solid waste management programs.

  "To put it simply, if there is no long-term federal funding commitment, there will be only a bare minimum state program for solid waste management and no delegation of the federal program for hazardous waste management." (*Hawaii*)

- There is an inherent resistance and, consequently, little likelihood that states could establish an EPA-recommended user fee system to provide continued funding for solid waste management programs, because of strong "home rule" philosophies that prevail throughout the United States.

Some states have also indicated that the institution of a user fee may be prohibited by existing state or local laws.

> *"I think it is unrealistic to expect that a fee system can support either a solid or a hazardous waste program and that I do not expect we will be able to secure the passage, or even the introduction, of any legislation which would support such a scheme."* (*Rhode Island*)

- Should federal funding be phased out or greatly curtailed over the next two to three years, the country as a whole will be unable to meet the Congressional intent of the Resource Conservation and Recovery Act.

> *"A reduction in federal funding would destroy the solid/hazardous waste program in South Carolina---a cutback in personnel and activities would be the only answer if federal monies are lost."* (*South Carolina*)

Based on these conclusions, the NGA Subcommittee on the Environment makes the following recommendations:

- The federal government has a major responsibility and obligation to assist the states in solving our national solid and hazardous waste problems. Congress must provide sufficient RCRA funds to the states to permit them to carry out the intent of RCRA. Continued funding of State programs must be provided on a long-term basis.
- Congress must provide the states with the additional financial assistance needed to implement new solid waste management, resource recovery and resource conservation systems.

- Although the long-term goal should be to have fees support a major portion of the states' solid and hazardous waste programs, the United States Environmental Protection Agency should cease attempts at this time to promote user fee schemes as a means to shift the financial burden of solving our nation's solid waste problems onto State and local governments.
- The success of RCRA will largely be determined by the states' willingness and capability of implementing hazardous waste programs. In order to encourage states to develop such programs and to assure that states will have the necessary resources to implement such programs, federal, technical and financial assistance must continue for at least the next five years.

Congress has mobilized the nation to begin solving our solid waste problems. We must not lessen our resolve if we are to complete our mission.

II. Conclusions and Recommendations

A. Conclusions

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Faced with this grim possibility, the National Governors' Association decided to poll the states to assess what the individual as well as collective results would be if RCRA funding is phased out over the next three years (see Appendices A and B). As a result of its national poll of State solid waste program officials, the Association found that :

- The majority of states are heavily dependent upon RCRA funding for continued operation of State solid waste management programs.

  "To put it simply, if there is no long-term federal funding commitment, there will be only a bare minimum State program for solid waste management and no delegation of the federal program for hazardous waste management." (*Hawaii*)

- There is an inherent resistance and, consequently, little likelihood that states could establish an EPA-recommended user fee system to provide continued funding for solid waste management programs, because of strong "home rule" philosophies that prevail throughout the United States.
- The success of RCRA will largely be determined by the states' willingness and capability to implement hazardous waste programs. In order to encourage states to develop such programs and to assure that states will have the necessary resources to implement such programs, federal, technical and financial assistance must continue for at least the next five years.

Some states have also indicated that the institution of a user fee may be prohibited by existing state or local laws.

> *"I think it is unrealistic to expect that a fee system can support either a solid or a hazardous waste program and that I do not expect we will be able to secure the passage, or even the introduction, of any legislation which would support such a scheme."* *(Rhode Island)*

- Should federal funding be phased out or greatly curtailed over the next two to three years, the country as a whole will be unable to meet the Congressional intent of the Resource Conservation and Recovery Act.

> *"A reduction in federal funding would destroy the solid/hazardous waste program in South Carolina--- a cutback in personnel and activities would be the only answer if federal monies are lost."* *(South Carolina)*

More specifically, the NGA Subcommittee on the Environment concluded that the proposed reduction or elimination of RCRA Subtitle D funds and attempted substitution of a user fee scheme would have the following results:

- The States cannot bear the cost of administering federally mandated and encouraged programs without substantial amounts of federal financial and technical assistance. Even the very uncertainty of the future of federal funds under RCRA has a deleterious effect on State and local solid waste management programs as most governmental units will not risk the possibility, or probability, of being forced to ultimately assume financial responsibility for new federal programs.

- There will be a disastrous impact on State and local solid waste management programs. Programs will suffer severe cuts; some may even be entirely eliminated. Governmental units will not be able to attract and hire, or perhaps even retain, the skilled staff necessary to develop and implement programs.
- The states will be unable to cope with or manage increasing amounts of sludge generated as a result of more stringent pollution control laws and the imminent ban on ocean dumping.
- The open dump inventory has become more costly and will require more time for completion. The inventory may even languish and die for lack of needed staff and financial support.
- Most states will be unable to implement the State solid waste management plans now being developed with RCRA funds.
- Some states will be forced to abandon RCRA programs and responsibilities while other states will see programs suffer and fail.
- User fee schemes will be widely opposed. Pressure by the United States Environmental Protection Agency for institution of user fees does State programs a serious injustice. Further, such schemes are unfair and unrealistic and will lead to increased roadside and "midnight" dumping. Solid waste is a grave national problem which demands to be treated with the same seriousness and dedication to purpose accorded our air and water pollution problems.

To summarize the conclusions reached, Congress, with much deliberation and foresight, enacted RCRA and authorized the use of federal funds to begin solving our massive solid waste problems. Now, as tangible progress is beginning to be made, State and local governments are faced with the grim prospect of trying to hold together the pieces of programs without the federal funds on which they must depend.

B. Recommendations

- The federal government has a major responsibility and obligation to assist the states in solving our national solid and hazardous waste problems. Congress must provide sufficient RCRA funds to the states to permit them to carry out the intent of RCRA. Continued funding of State programs must be provided on a long-term basis.
- Congress must provide the states with the additional financial assistance needed to implement new solid waste management, resource recovery and resource conservation systems.
- Although the long-term goal should be to have fees support a major portion of the states' solid and hazardous waste programs, the United States Environmental Protection Agency should cease attempts at this time to promote user fee schemes as a means to shift the financial burden of solving our nation's solid waste problems onto State and local governments.
- The success of RCRA will largely be determined by the states' willingness and capability of implementing hazardous waste programs. In order to encourage states to develop such hazardous waste programs and to assure that states will have the necessary resources to implement such programs, federal, technical and financial assistance must continue for at least the next five years.

III. Issue Discussion

A. Identification of Issues and Problems

1. Congressional Findings and Objectives of RCRA

The enactment of the Resource Conservation and Recovery Act in 1976 was heralded as a major step toward resolving many of the solid waste management problems facing all levels of government in the nation.

Congress found that solid waste has a tremendous impact on our environment and health as well as our supplies of materials and energy. In spite of its value as a national resource, the land is still the final repository of most solid waste either in open dumps or in sanitary landfills, and the nation is running out of suitable solid waste disposal sites. Human health and the environment can be placed in jeopardy without careful planning and management of the disposal of solid and hazardous waste. More stringent air and water pollution control measures have resulted in greater amounts of sludges and residues requiring disposal, while inadequate or unsound solid waste disposal practices contribute to increases in air and water pollution problems. In addition, solid waste represents a vast reservoir of materials and energy that can be recovered or conserved, thus, reducing United States dependence on foreign resources.

Congress recognized that solid waste management problems and issues transcend State and local government boundaries and that adequate financial and technical assistance to the states is necessary to accomplish RCRA's goals of protecting public health and the environment and to conserve valuable material and energy resources. More specifically, the objectives of

RCRA included provision of technical and financial assistance to State and local governments for the development of solid waste management plans--the key to promoting improved solid waste management techniques; promotion of the demonstration, construction and application of environmentally sound resource recovery and solid waste management techniques; and establishment of a cooperative effort among the federal, State and local governments and private enterprise to recover valuable materials and energy from solid waste.

2. Phase-Out of Funds and Substitution of User Fees

The intent of RCRA was to build upon the accomplishments of the Solid Waste Disposal Act, as amended, and to initiate a bold new program to control the management of hazardous wastes. In the confusion brought about by long delays in the promulgation of mandated rules, regulations, guidelines and criteria by EPA, one fact appears to overshadow all others--the problems associated with the management of residuals are of a much greater magnitude than originally envisioned.

Funding of State programs under RCRA Subtitle D will be reduced from over $13 million in the current Federal Fiscal Year to $8 million for FFY 1981, according to the latest unofficial reports, and will be phased out entirely over the following three years. The argument presented is that previous financial support will have allowed each State to develop a comprehensive plan for the sound solid waste management program. Initiation of a disposal fee system is proposed as an effective means for each State to fund its solid waste management program in the future after federal support is ended. Although there has been no prediction of cutting back Subtitle C funding, the future of federal support to state hazardous waste management programs is not clear.

3. Problems Facing State and Local Governments

To better understand the wide range of problems facing State and local governments, the Subcommittee on Environment of the National Governors' Association's Committee on Natural Resources and Environmental Management conducted a poll of State solid waste program officials. (See Appendices A and B)

The results of this poll indicate agreement that most prohibitions and/or regulatory actions embodied in RCRA are designed for implementation by State and local governments and that this is a proper role for these governments provided adequate support funds are granted to those responsible for carrying out the requisite programs.

The essence of the general problem now facing these governmental units is this: federally mandated and encouraged programs unrealistically coupled with evaporating federal financial support to carry out those programs. State and local governments have accepted the challenges of RCRA and have used federal funds to initiate bold new programs to recover energy and material resources and to ensure the safe management and disposal of unrecoverable solid and hazardous wastes. Now, however, they are faced with the prospect of attempting to carry out urgently needed, federally mandated programs, but with little or no federal financial support.

This general problem is exacerbated by several underlying problem areas which contribute to the overall inability of State and local governments across the country to carry out the directives of RCRA. Among these problem areas are the following:

- State solid waste programs rely heavily on federal financial support. Among others, Missouri, New York, Vermont and West Virginia report that well over half of their respective solid waste programs are staffed and financed with federal funds.

  > *"Subtitle D focuses on the entire solid waste effort in the State...It is, in fact, the mainstay of the entire program."* (*Vermont*)

- More stringent air and water pollution laws that justifiably preclude the disposal of waste in the nation's air and water have increased the necessity to dispose of solid waste on the land. An excellent example of this is in the area of sludge management. As new municipal sewage treatment plants become operational, these plants will be generating mushrooming quantities of sewage sludges. Further, the federally mandated phase-out of ocean dumping of sewage sludge by 1981 coupled with stricter incineration requirements will force many State and local governments to turn to land disposal of these residuals. Thus, environmentally safe and economically feasible industrial and municipal sludge pre-treatment programs must be instituted if these sludges are to be properly handled.
- Continued delays in the promulgation of needed federal rules and regulations, especially in the area of hazardous waste have caused the elimination or postponement of corrective programs at the State and local government level. In addition, inflation continues to increase the amounts of funding that will be required when solid waste programs commence or restart.

> *"...EPA has caused delays in implementing the RCRA program through its inability to promulgate RCRA regulations within required time frames. This has particularly hampered our ability to complete the open dump inventory and to develop the authorization plan under Subtitle C."* (*Michigan*)

- The national open dump inventory as well as other mandated solid waste program efforts will be far more costly and time consuming then originally anticipated. One has only to review the recently published Guidance Manual for the Classification of Solid Waste Disposal Facilities to gain an appreciation of this contention. For example, it now appears that the monitoring of both gas and groundwater will be necessary as well as periodic follow-up to ensure proper sampling.

> *"...the national open dump inventory will undoubtedly be much more costly than the funding presently projected to be available from EPA."* (*Missouri*)

- The funds provided to date under RCRA have allowed many states to identify and categorize their individual solid waste problem areas and to begin to develop and plan for the correction of these problems. However, to curtail or phase out the funding needed to accomplish the implementation of these corrective State solid waste planning activities would result in the continuation of existing problems. Further, without implementation, prior funds expended for problem identification and planning will have been all but wasted.

> *"...without continued federal support for solid waste management, the progress we have made during the past four years will diminish within six to nine months...our present momentum in program development and implementation would be severely handicapped without federal support."* (*Florida*)

4. Why Federal Funds are Necessary

As Congress recognized in enacting RCRA, solid waste management issues and problems transcend State boundaries and require a strong federal role. Along with technical assistance, the federal government must provide financial support for the already financially strapped states.

More specifically, federal funds are needed:

- To finance the national open dump inventory which has become much more costly and time consuming than originally anticipated.
- To attract and retain skilled personnel to carry out required solid waste programs.
- To finance new State initiatives toward materials and energy recovery programs.
- To finance programs to handle the mushrooming amounts of sludge resulting from more stringent air and water pollution laws and the impending ban on ocean dumping of sludge.
- To defuse the growing opposition toward shifting financial burdens to State and local governments through the use of user fee schemes.

B. Potential Adverse Impacts

The National Governors' Association remains cognizant of one very salient fact: solid waste management activities will continue to be managed on a day-to-day basis by State and local governments. These governmental units have traditionally been responsible for programs of waste disposal, waste recovery, sludge management and increasingly more important, the management of hazardous wastes. Should funding under the Resource Conservation and Recovery Act be greatly reduced or worse, phased out, State and local governments will be unable to absorb the added financial and administrative responsibilities inherent in RCRA's objectives.

The consequences of the proposed phase-out of RCRA Subtitle D funds is alarming and, potentially disastrous:

- Although solid waste management has traditionally been a State and local government responsibility, the federal government has developed rules and regulations and provided financial assistance which resulted in dramatic growth in State and local programs to solve mounting solid waste problems.

  Substantial cutbacks or total elimination of federal funds will consequently result in severe cuts in State programs which rely on federal funds for staff and operating expenses. In some cases, entire programs may be abolished.

  This may cause a reversion to pre-RCRA problems and failure to meet in even a cursory manner the objectives of RCRA.

- The State of New Mexico has recently informed the United States Environmental Protection Agency that the State "will no longer participate in RCRA Subtitle D programs and will not request (any) future funding for solid waste management." Further, Hawaii is representative of a growing number of states unwilling to fill positions supported by Federal funds if they are expected to be later replaced by State funds.

  If the states cannot carry out federal programs due to a lack of federal funding, will the federal government step in to do the job? Could the "savings" realized by eliminating Subtitle D funds come close to financing such a federal effort?

- Many RCRA programs will suffer or fail. The open dump inventory will fall behind schedule or perhaps languish and die. State solid waste management plans developed under RCRA will not be implemented. Necessary surveillance and compliance efforts will be cut back, eliminated or not implemented.

- Pressures to institute State or local user fees are unrealistic and unfair and will encourage more roadside or "midnight" open dumping.

  The National Governors' Association poll indicated widespread opposition to user fee schemes, particularly in strong "home rule" states. Further, it must be noted that the federal government does not propose and promote user fee schemes to finance air and water pollution control programs.

Solid Waste - garbage and sludge - may not be as glamorous a cause as related air and water pollution problems, but it is every bit as serious.

Air, water and land pollution - these are national problems which demand to be treated and solved in the same manner.

C. History of Federal Funding Under RCRA

When RCRA was enacted in 1976, Congress incorporated the authorization of specific appropriations for federal fiscal years 1977, 1978 and 1979.

Congress is currently considering legislation to reauthorize RCRA. The following table, based on data furnished by the United States Environmental Protection Agency, outlines total RCRA funding through federal fiscal year 1980:

Total RCRA Funding

Federal Fiscal Year	RCRA Authorization	EPA Request to Congress	Total Funds Appropriated to EPA	EPA Funds Appropriated to States
1977	$181,000,000	$ 15,760,000	$15,760,000	0*
1978	181,000,000	36,533,000	39,825,000	$14,500,000
1979	160,250,000	59,901,000	73,792,000	26,200,000
1980	To be determined	100,059,000	92,289,000**	28,600,000

*No State grants in fiscal year 1977.

**Total appropriation will be $100,059,000 pending approval of a $7,700,000 supplemental request.

As the table indicates, EPA requests to Congress have fallen far short of the amounts authorized by RCRA. In 1978 and 1979 Congress actually appropriated more funds than EPA requested.

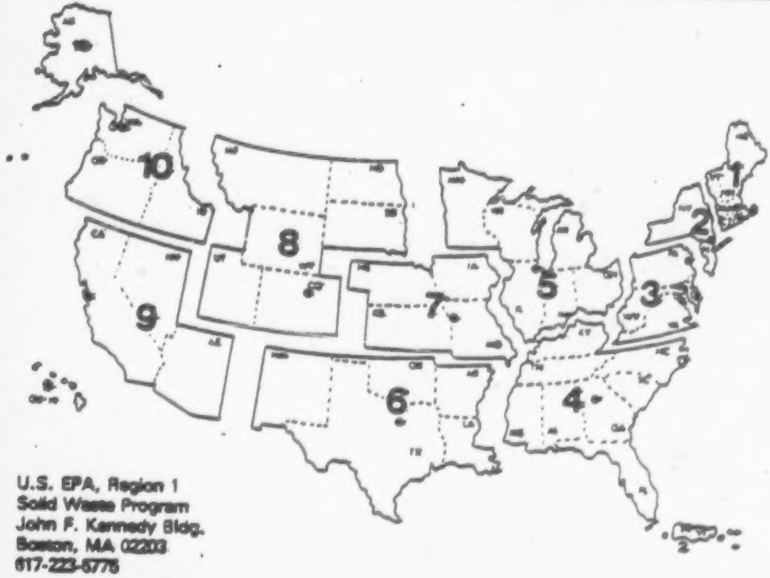
However, of the funds appropriated to EPA by Congress, only a small fraction has been appropriated by EPA to the states. EPA proposals for Subtitle D funds are even more startling. EPA has requested an appropriation of $17,300,000 for fiscal year 1980. Projected requests for future years will diminish from $8,000,000 in 1981; $6,000,000 in 1982; $4,000,000 in 1983; and $2,000,000 in 1984 to zero in 1985.

The amount of RCRA authorizations actually received by the states thus far has been incredibly inadequate. The proposed phasing out of future RCRA funding would be a travesty of justice.

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGIONS



U.S. EPA, Region 1
Solid Waste Program
John F. Kennedy Bldg.
Boston, MA 02203
617-223-5775

U.S. EPA, Region 2
Solid Waste Section
26 Federal Plaza
New York, NY 10007
212-264-0503

U.S. EPA, Region 3
Solid Waste Program
6th and Walnut Sts.
Philadelphia, PA 19106
215-597-9377

U.S. EPA, Region 4
Solid Waste Program
345 Courtland St., N.E.
Atlanta, GA 30308
404-881-3016

U.S. EPA, Region 5
Solid Waste Program
230 South Dearborn St.
Chicago, IL 60604
312-353-2197

U.S. EPA, Region 6
Solid Waste Section
1201 Elm St.
Dallas, TX 75270
214-767-2734

U.S. EPA, Region 7
Solid Waste Section
1735 Baltimore Ave.
Kansas City, MO 64108
816-374-3307

U.S. EPA, Region 8
Solid Waste Section
1860 Lincoln St.
Denver, CO 80295
303-837-2221

U.S. EPA, Region 9
Solid Waste Program
215 Fremont St.
San Francisco, CA 94105
415-556-4606

U.S. EPA, Region 10
Solid Waste Program
1200 6th Ave.
Seattle, WA 98101
206-442-1260

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 1

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
Connecticut	There are currently no fees in existence and no future plans to institute a fee system to fund solid waste programs.	Over 40% of solid waste management program funded federally. Loss of funding would reduce staff by 25%. Hazardous waste program fully funded by federal money. Loss of funds will affect: hazardous waste manifest and siting programs, solid waste enforcement program, technical assistance to local government, program for transition from local to regional disposal, State Plan, open dump inventory. Funding must be forthcoming to enable continuance of resource recovery programs.
Maine	Institution of a user fee would require an act of the Legislature and to date no legislation has been willing to sponsor such an act. It is unlikely that such fee will be instituted in the future.	There will be a significant loss of personnel if RCRA funds are eliminated. Technical assistance to municipalities and the ability to process new waste facility applications would be discontinued.
Massachusetts	Imposing a user fee would not be impossible, however, prevailing "home rule" policy makes it very unlikely.	A reduction of RCRA funds would severely curtail progress on the open dump inventory. Personnel now working on regional resource recovery projects would probably be terminated.
New Hampshire	Expectation is that a fee system would not be acceptable as residents are "home rule" oriented.	Efforts will be critically affected without federal support and programs will be delayed. For example, the open dump inventory will not be completed in a timely manner. RCRA monies are needed to fund solid waste positions as federal funds support most of the programs.

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 1

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
Rhode Island	Does not expect that legislation for a fee system could be introduced, let alone passed.	Lack of funding would have a disastrous effect on waste management programs.
Vermont	User fees would not be politically acceptable and would be looked upon as taxes not fees.	All aspects of the solid waste program would be severely cut back or eliminated.
EPA REGION 2		
New Jersey	User fees are being considered but will meet with strong municipal resistance because of an existing State law which precludes more than a 5% increase in municipal budgets over the previous year. Any user fees would only provide partial funding support to the solid waste program. Remaining funding support must come from federal sources.	Eighty (80) percent of solid waste planning staff is federally funded and could be terminated if RCRA money is reduced. The open dump inventory could not be completed. Inspection of hazardous waste facilities is a State-funded program. However, the remainder of the hazardous waste program is RCRA funded and any cut in funds would have a negative impact on this program.
New York	Current fiscal climate is such that passage and acceptance of a user fee system is highly unlikely. Also, New York is a State where a strong "home rule" philosophy prevails and local governments would oppose a user fee system.	Provision should be made to adequately fund State solid waste programs on a continuing and predictable basis. A phase-out of financial support to NYS would be disastrous as the solid waste program is heavily dependent upon federal funding. Programs on hazardous waste management, open dump inventory and resource recovery promotion would be greatly curtailed should funding through RCRA diminish.
Puerto Rico	Difficult to implement as waste disposal services are provided free of charge to the vast majority of users.	Greater than half of the current solid waste program is dependent upon federal funds, therefore, any reduction would cause severe problems.

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 3

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
Delaware	Institution of a user fee is not probable.	Federal funding necessary for administration of RCRA.
Maryland	Currently has a user fee system in place relative to basic regulatory programs such as permitting of facilities. However, increased user fees to cover various Subtitle D activities (open dump inventory, etc.) is not likely.	Reductions in Subtitle D funding would consequently cause reduced efforts toward progress of the open dump inventory and promotion of resource recovery.
Pennsylvania	Licensing fee system is currently in place and is the only fee anticipated at this time for solid waste programs.	The State estimates that 50% of projected program goals will not be accomplished within the allotted five year period without adequate federal funding support.
Virginia	State Health Department does not intend to seek authority to establish a fee system for permitting and regulating functions for non-hazardous waste disposal.	Following programs would possibly be affected by a cut-back in federal funding: public participation actions, solid waste planning, open dump inventory, resource recovery.
Washington, D.C.	Current fee system comprises a tipping fee at municipal facilities. The District government does not anticipate any new fees.	Lack of federal funding would adversely affect the following programs: hazardous waste personnel, sampling, laboratory and contractual services, assistance to private landfill operators to bring facilities into compliance with RCRA, resource recovery and recycling.

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 3

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
West Virginia	A disposal fee could hamper their solid waste program.	Lack of RCRA funding would adversely affect: compliance with inventory schedules, State Plan, certification program, consultant services, field inspections. These programs would be delayed, reduced in scope or eliminated. Personnel levels would be severely reduced. Federal money funds over 50% of program.
EPA REGION 4		
Alabama	No fee system at present. It is unlikely that a user fee would pass the Legislature.	"Drastic." More than 26% of program is federally funded. Lack of funds will affect inventory programs, hazardous waste programs and implementation of solid waste programs.
Florida	No disposal fee system at present. "Home rule" status of State would prevent passage of fee legislation.	State and federal regulatory requirements (planning, permitting, monitoring, inspections, operations, open dumps) will not be able to be carried out by local government. Lack of funding would severely handicap programs of local assistance for groundwater protection.
Georgia	There is no current user fee system and the State has no intention of instituting any such system.	Any cut in RCRA funds would cause a corresponding cut in staff and compliance activities such as the open dump inventory.

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 4

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
Kentucky	No user fee system at present. There is currently insufficient money at the local level to carry out programs. State is trying to establish a solid waste fund to return money to the municipalities, however, this is meeting with political opposition.	Program is 26% federal funded. Loss of funding would reduce resource recovery activities, prevent completion of the open dump inventory on time, and necessitate staff reduction. Funding has never been adequate.
Mississippi	It is probable that no fee system could be imposed as local governments own and operate 99% of all collection and disposal systems.	Lack of federal funds will severely restrict hazardous waste program and hinder efforts to implement non-hazardous waste regulations. Budget requirements for hazardous waste for next year will be twice those of this year. Cuts in "D" funding could increase public health risk and promote environmental degradation. Federal funding is essential for implementation of resource recovery.
North Carolina	User fee would be the "poorest" system to implement. A fee would defeat the purpose of landfills. Opposition could be expected from local government and the Legislature.	State operates on a "base year" budget and must have matching State money to implement programs. If "D" funding is reduced, both "C" and "D" programs will suffer particularly enforcement of landfill upgrading and investigation of inactive sites. Program is 73% federally funded.
South Carolina	User fee system would almost be impossible to implement because of prevailing "home rule" philosophy.	"A reduction in funding would destroy the solid/hazardous waste program." State depends heavily on federal funds to operate both programs. Compliance with the regulations for the open dump inventory will be "practically impossible." Additional staff and surface and groundwater and gas analyses would be curtailed.

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 4

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
Tennessee	State Hazardous Waste Management Act provides for fees which are not being collected because of lack of implementation. No fees exist for solid waste. It is believed that such fees would elicit severe opposition from city and county governments.	Loss of federal funds would be disastrous because projections of future increasing workload. Programs that would be affected are: grants program, loan program for resource recovery facilities. Additional monies will be needed for close surveillance and efficient management.
EPA REGION 5		
Illinois	There is presently a user fee for hazardous waste haulers to support a special cleanup fund. While there are no current plans to institute additional fee systems, it was reported that substantial resistance to same would not be anticipated.	There could be personnel cut-backs since more than 50% of the program is federally funded. The State has a good core program which would continue even if federal money is withdrawn.
Indiana	Legislation has been introduced for a user fee to be applied to a "clean-up fund." Since a "home rule" philosophy prevails, it is unlikely that it will pass.	"Devastating." Program is 67% federally funded. Cut-back in funding will affect the open dump inventory. Legislation has been introduced for an inventory of illegal hazardous waste dump sites, but money must come from EPA. Any reductions in "C" funding will affect this program. Reduction in funding will delay implementation of solid waste programs. Lack of local "pass-through" money will reduce local government participation in the solid waste program.

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 5

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
Michigan	Institution of a user fee is unlikely because of anticipated opposition from the State Legislature and local government.	Delays in promulgation of RCRA regulations by EPA has hindered completion of the open dump inventory and development of an authorization plan under Subtitle "C". Loss of funding will necessitate staff reductions affecting both programs. Remedial measures for open dumps may not be implemented.
Minnesota	The State Pollution Control Agency and the Legislature are opposed to user fees. Also, opposition can be expected from local government.	Lack of funds would affect the open dump inventory, planning activities for local government, technical assistance for resource recovery, waste reduction and source separation. Enforcement would suffer. The solid waste program is 58% federally funded in total; Subtitle "D" funds account for 38% of the budget.
Ohio	Does not presently have a disposal fee system. Two bills are in Legislature to provide for fees. The outcome of both is uncertain. If such a bill is passed, substantial income would not be expected for three years after passage.	State funds are insufficient to allow for continued expansion of hazardous waste programs. State appropriation for existing solid waste programs predicated on EPA land pollution control grant. Reduction in federal funds will probably prevent expansion of hazardous waste program. Solid waste regulatory program will probably be kept at current levels. Inventory and State planning activities and expansion of open dump enforcement program are and will be very dependent on federal funds, or else they may not be able to be carried out.

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 5

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
Wisconsin	A system of licensing fees is in place to compensate for loss of "Subtitle D" funding.	Loss of funds will adversely affect the following programs: update of areawide plans, open dump inventory, enforcement, promotion of resource recovery and other existing and planned non-hazardous waste programs.
EPA REGION 6 Arkansas	State anticipates having to advocate a user fee for sanitation services attached to a litter plan.	Rising inflation increases the costs of administering EPA's programs and the State must balance this with funding more expensive service programs at the same or a slightly reduced level. It is expected that reduced funding will not permit evaluation of the open dump inventory or hazardous waste inventory.
Louisiana	User fee system would not be politically acceptable.	State will have to bear annually rising costs regardless of federal assistance. Additional federal programs will result in increased costs. Solid and hazardous waste programs are inter-connected and loss of funding affects both. State Plan/Open Dump Inventory will suffer as will enforcement of regulations. Resource recovery is presently under-funded and would not be developed as a program.
New Mexico	The State is currently phasing-out the acceptance of all RCRA funding assistance as State officials believe that the RCRA guidelines do not reflect the solid waste needs of New Mexico.	

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 6

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
Oklahoma	Not probable because it could be self-defeating. Experience of State is that imposition of gate charges encourages citizens to dump illegally.	Most severely affected would be the open dump inventory which would take seven to nine years with current resources. Current State appropriations are inadequate to meet rising demand for solid waste management. Other programs that would be impacted are: enforcement, identification of illegal dump sites, resource recovery, public education. An increase in funding is needed for planning and rural community assistance. Program is 2/3 federally funded.
Texas	The State is considering a fee system but does not favor it. Communities would oppose such a system in all likelihood.	If Subtitle D money is cut back, planning activities and the open dump inventory would be discontinued as personnel would be terminated.
EPA REGION 7		
Iowa	No fee system at present. It may be necessary to introduce a fee if the federal "superfund" is not passed.	Thirty (30) percent of the program is federally funded. Solid waste programs will be negatively affected by lack of federal funding.
Kansas	No fee system at present. Most landfills are publicly operated. A user fee for private sites would not be politically unacceptable.	Program is 50% federally funded. Reduction in federal funding would prohibit complete compliance with RCRA "D" requirements and would delay an inspection program of permitted facilities.

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 7

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
Missouri	Does not support fee system. Anticipate that 25-30% would be utilized in an auditing system.	Solid waste management program is 60-70% federally funded. Loss of federal funding would necessitate reduction in solid waste inspection and enforcement capability. State is in process of implementing hazardous waste program. State recommends increase of 10-15% in hazardous waste funding. Notes that EPA will lose its influence on State solid waste regulatory programs without funding. Open dump inventory will be severely restricted in scope. State recommends that unless EPA changes funding plans for Subtitle "D" they should withdraw State planning guidelines and abandon open dump inventory.
Nebraska	A user fee may be instituted to supplement "perpetual care" of hazardous waste sites. There is a political opposition to any user fee system to support the entire solid waste program.	The criteria for monitoring wells may keep the open dump inventory from ever being completed. Any cutback of funds would lessen public participation, and regionalization of projects.
EPA REGION 8		
Colorado	Presently has a hazardous waste fee system. A user fee for solid waste, however, would be unacceptable to local government.	Continued federal funding is essential to the open dump inventory. The delay by EPA in finalizing classification criteria, coupled with the fact that the open dump inventory will be far more costly and time consuming than originally envisioned, clearly establishes the need for continued RCRA funding support.

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 8

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
Montana	A fee system is not probable because of expected opposition at the local level.	Believes lack of federal funding will result in poor management practices and staff reduction. Additional federal funding over present levels will be required in the future. State Legislature hesitated to assume responsibility for Subtitle "C" programs because they did not want to be forced to provide State money when federal monies were phased out. Lack of past funding for local governments to plan and implement solid waste programs has slowed progress.
North Dakota	No fee system at present, but one may be necessary in the future.	Loss of funding would be "disastrous," and the introduction of any new programs would be made very difficult. Less money will hinder implementation of research and resource recovery programs.
South Dakota	User fee would not be supported by the Legislature and would not support the State's program.	Current funding levels are "inadequate" to accomplish Subtitle "D" planning and inventory tasks. The open dump inventory is a "waste of time;" funds should be provided for correction instead. State has an aggressive solid waste management policy. Lack of funding could affect hazardous waste programs and program to upgrade solid waste practices in small communities. Staff would have to be reduced by 50%.

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 8

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
Utah	Any user fee system is currently illegal and would require statutory change. Also, tremendous opposition forseen regarding a proposed user fee.	Subtitle "D" funded personnel would be lost unless funding could be taken from Subtitle "C" in which case the hazardous waste program would suffer.
Wyoming	Fee system highly unlikely due to small population. In fact, local government looks for funding support from the State rather than providing funding support to the State.	If federal funding is cut back or eliminated, the State Legislature would have to provide funding or the solid waste program would be discontinued.
EPA REGION 9		
Arizona	Impractical as State would have to charge $1,000-1,500 per landfill to be economically feasible.	Ninety (90) percent of the program is federally funded. Loss of funds will adversely affect the State Plan, open dump inventory, resource recovery and enforcement.
California	A user fee system would be "unworkable."	Citizen support of further tax reductions will result in less State funds for RCRA programs. Lack of federal money will necessitate that non-hazardous waste programs remain at current levels. Program re-authorization will vary proportionately with available funds.

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 9

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
Hawaii	User fee not probable. Legislature is "adamantly" opposed to any State agency maintaining a self-funding system.	Lack of funding will result in a minimum program of solid waste management and no delegation of the federal program for hazardous waste. State will not be able to fill positions now supported by federal funds. Governor will not permit State to accept responsibility for any new federal program that will have to be assumed by the State.
Nevada	User fees unlikely as the State Constitution limits the tax rate and most communities are at their maximum at present. Also, smaller communities will in all likelihood oppose a user fee system.	Staff would be reduced by 50% if Subtitle "D" money is eliminated. Would delay the open dump inventory, adversely affect reporting, and reduce field inspections relative to the solid waste program.
EPA REGION 10		
Alaska	No fee system at present. It is unlikely that local government will accept a user fee.	Lack of funding will affect solid waste programs and will prevent compliance with RCRA "D" requirements. Program is 38% federally funded. It is unlikely that State Legislature will grant funding to make up the difference if federal funds are unavailable.

APPENDIX A

SUMMARY OF STATES' RESPONSES

EPA REGION 10

State	Status and/or Probability of Establishing a Disposal Fee System To Provide Program Funding	Potential Effect Upon Solid Waste Program Should RCRA Funding Be Phased Out In Three Years
Idaho	Current fee system not working well. State's five-year plan does not include fees for most remote areas.	RCRA funds are currently financing development of a hazardous waste program. Lack of funding would greatly reduce the solid waste program. Solid waste management programs are being handled by local county commissions. Local health departments are responsible for open dump inventory and related activities.
Oregon	There are presently no solid waste fees and the State would be reluctant to impose any.	Many key people are federally funded and would be lost. The open dump inventory would be severely curtailed.
Washington	The political climate would not allow for a user fee system.	The solid waste program receives substantial funding and a cut-back would seriously hamper work on open dump inventory and State solid waste plan.

Association of State and Territorial Solid Waste Management Officials
444 North Capitol Street, N.W. • Washington, D.C. 20001 • 202-624-5828

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SUPPORT OF THE
DEPARTMENT OF COMMERCE
PROGRAMS UNDER THE
RESOURCE CONSERVATION AND
RECOVERY ACT

TASK II
STATES' MEASUREMENT NEEDS
FINAL REPORT

SEPTEMBER 30, 1981

STATE MEASUREMENT NEEDS STUDY

FINAL REPORT

ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS

September 30, 1981

FORWARD

The following report was undertaken by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) at the request of the Technical Advisory Center (TAC), Office of Recycled Materials (ORM), National Bureau of Standards (NBS) under Grant No. NB80NADA1055. Its purpose was to determine the various measurement and technical assistance needs of the States in order to comply to the measurement requirements specified under the Resource Conservation and Recovery Act (RCRA), Subtitle C, Hazardous Waste Management Regulations, Subtitle D, Solid Waste Management, and Subtitle E, Guidelines for Resource Recovery and Materials and Energy Recovery.

The results reflect State activities during the EPA Phase I authorization period and are valid through September 30, 1981. Any substantive comments, corrections, or questions should be forwarded to the attention of Ms. Jacqueline M. Rams, Technical Director, Association of State and Territorial Solid Waste Management Officials, 444 North Capitol Street, N.W., Suite 375, Washington, D.C. 20001.

Norman H. Nosenchuck

Norman H. Nosenchuck, P.E.
President
Association of State and Territorial
Solid Waste Management Officials

EXECUTIVE SUMMARY

The Association of State and Territorial Solid Waste Management Officials has conducted a study for the Technical Advisory Center (TAC), Office of Recycled Materials, Department of Commerce to determine the State's technical capabilities and measurement needs resulting from implementation of RCRA, Subtitle C, Hazardous Waste Management regulations, Subtitle D Solid Waste Management regulations, and Subtitle E, Guidelines for Resource Recovery and materials and energy recovery. Measurement needs associated with RCRA will demand standard reference materials, standard reference data, standard protocols and criteria for sampling and analysis and possibly new analytical techniques. This ability to sample and conduct reliable laboratory analyses becomes the enforcement tool of the act's mandate to protect the public health and the environment. It permits establishment of a baseline to which subsequent data can be legally and quantitatively compared and evaluated for potential compliance actions; provides extra time to develop innovative disposal, reuse, and reclamation techniques while acting as an early warning and quality control device for existing facilities and designs; provides the basis for setting acceptable emission levels and shaping design and performance standards for new activities; and it provides a means of acquiring a permit variance. It therefore behooves the States, in this case the regulator, to meet RCRA's measurement needs effectively, expeditiously, and consistently.

This report details six States' capabilities in meeting those objectives: Louisiana, Mississippi, Oklahoma, Pennsylvania, Texas and Virginia. With the exception of Virginia, which has entered into a cooperative agreement with the U.S. Environmental Protection Agency (EPA), the remaining five States have received authorization to run their own programs for Phase I program implementation. Laboratory capabilities in meeting the measurement requirements of RCRA vary from no laboratory support and the utilization of contractors (Louisiana) to full-service State laboratory support functions (Oklahoma, Pennsylvania, and Texas). The ability, then, for States to comply with RCRA's technical needs consistently on a State-to-State level has not yet been achieved -- and their capabilities of doing so in the near future varies.

Measurement requirements associated with RCRA pertain to two general areas of waste management activities: identification of a waste to be hazardous or non-hazardous and monitoring expectations associated with permitting of facilities, existing or new. Determination of the hazardous characteristics for a waste (and hence its definition of being hazardous or non-hazardous) requires analytical testing for the following: ignitability, corrosivity, reactivity and EP toxicity. Monitoring requirements are associated with baseline analysis, operational analysis, and facility closure and post-closure to assure negligible environment insult and eliminate possible endangerment to the public health. Possible routes of entry into the environment are via groundwater, surface water, air, soil, and leachate. Analysis of samples from these five discharge points will specify the substrate composition, concentration levels, the mobility of potentially threatening hazardous constituents, and hence the level of endangerment that exists for this activity.

RESULTS

1) A comparison of State and Federal testing requirements under Subtitle C is summarized in Chart A, and for Subtitle D - Chart B. On the whole, measurement needs cited in Federal and State criteria appear ubiquitous. Even though some States differ in their degree of stringency (Louisiana, Pennsylvania, Oklahoma), States (with the exception of Virginia) have adopted the uniform and minimal requirements as specified in the Federal program. The trend, moreover, in the other States is similar for simplicity's sake in achieving Phase I program authorization. Subtitle D and Resource Recovery measurement requirements, however, do not exhibit the mandatory priorities associated with Subtitle C wastes and are therefore incomplete in such specificities.

2) Standard analytical methods, protocols and procedures specified in State regulations match methods cited in Federal criteria. Subsequent development of standard lab and field methods for sampling and analyses, standard reference data by EPA-ORD has been detained and exascerbated by decreased funding levels. The lack of availability for such measurement tools is severely impeding State-to-State consistency, timely program implementation, and worker protection and safety.

3) Few laboratory personnel had an integrated understanding of their role in RCRA programs. Moreover, there is a serious need for a formal operating procedures manual to insure consistency from State-to-State and within State field and laboratory functional areas.

4) Training programs and/or technical assistance for laboratory and field personnel and appropriate safety equipment and clothing are critically deficient at the State level. Funding to meet these needs is either inadequate or not available.

5) A standard laboratory certification quality assurance program for RCRA does not exist. Development of such programs will assist in attaining State-to-State consistency.

INTRODUCTION

Congress enacted the Resource Conservation and Recovery Act (RCRA), PL94-580 in 1976 to eliminate unsound waste management practices, protect the human health and the environment, and conserve valuable energy and materials. Historically, waste management functions had been handled at the State and Local level. Programs, however, were inconsistent from State to State. In addition, lack of defensible technical data, information and technology transfer, and minimal uniform guidelines governing these practices posed severe impediments to the waste community in trying to rectify the situation. RCRA, then, according to Congress, was to be the vehicle to upgrade existing State programs to a uniform national level. It mandated the US EPA (selected as the lead agency) to develop a regulatory framework to track hazardous wastes from "cradle to grave", provide guidelines for solid waste management activities, provide procurement guidelines for specific recovered materials, and promote information and technology transfer.

To avoid duplication of effort and utilize all resources available, EPA was mandated to consult with the States in developing the national program; and the States were in turn mandated to show "substantial equivalency" to the federal program and consistency among themselves. The intent of Congress was two-fold:

- a national uniform program would provide the minimal guidelines and requirements necessary to protect the human health and the environment; and,

- a national uniform program would eliminate potential economic inequities to the regulator and regulatee due to inconsistencies on a State to State level.

Implementation of RCRA has been slow. EPA did not meet its first statutory deadline, and, at present, does not anticipate completion of regulations governing land disposal until the end of 1983. Time delays pose severe problems to the waste community in general. Waste management, unlike other environmental concerns, does not deal with a pure science or established scientific techniques and protocols. The problems involve a combination of geological, hydrological, metereological, chemical and engineering considerations. In addition, the lack of an existing and defensible technical data base and measurement methods and procedures is reflected in the barely adequate protective and control measures required to protect the human health and the environment. Past disposal activities were, on the most part, undocumented, and discarded waste materials were not inventoried. Reactions of these materials in complex substrates, the mobility of these entities within those substrates to gain entry into the environment, and, more importantly, the effect on the surrounding population was and is, for the most part still unknown. Existing waste sites, therefore, present ambiguous and often complex systems potentially harmful to the surrounding community. To compound the situation, scientific measures to identify the extent of the problem or mitigate future problems are dependent upon regulatory guidelines, not yet fully developed, and an easily accessible data base which to-date is virtually non-existent. The regulators, in this case the States, and the regulated community are facing quite a dilemna. States are waiting for development of federal regulations to avoid duplication of effort and the need for potential legislative changes should their program not meet the equivalency definition. The regulated community, moreover, is experiencing decreased availability of disposal capacity and increased costs due to the current moratorium in the permitting process. Their present stance is to wait until State programs are fully developed and implemented.

The States have worked diligently in the past few years to adopt their own regulations which reflect consistency with other State programs and "substantial equivalence" to the national federal RCRA standards. These efforts have, in some cases, also been stymied by EPA's low program priorities, internal regulatory problems, including repeated postponement of original anticipated effective dates of regulations, revisions of major regulations in midstream, budget cuts, inconsistent EPA Regional office interpretations of State and federal standards, and disagreements over enforcement policy. In addition, State willingness to participate in program and regulatory development was never tapped and as a result, States have found themselves reacting to proposed regulations which neither reflect unique State concerns nor promote consistency on a State-to-State level. This reactionary mode, moreover, seriously deters effective communication among the States themselves.

As a result of these problems, technical resource efforts necessary for program implementation and support at the State level have not, for the most part, been fully developed. Solid and hazardous waste management program personnel are slowly coming to grips with their roles and responsibilities under RCRA, but related field personnel and laboratory support services in many cases are not adequately educated or prepared to assume their duties and remain unaware of the scope of work to be performed and protocols to be followed in RCRA-related activities.

The National Bureau of Standards, in planning for future program directives, perceives the need to continue its role in providing scientic assistance to the environmentally regulated community. Measurement needs associated with RCRA will demand standard reference materials, standard reference data, standard protocols and criteria for sampling and analysis and possibly new analytical techniques. The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) has conducted a study for the Technical Advisory Center (TAC), Office of Recycled Materials, Department of Commerce to determine the States' technical capabilities and measurement needs resulting from implementation of RCRA, Subtitle C, Hazardous Waste Management regulations, Subtitle D, Solid Waste Management regulations, and Subtitle E, guidelines for Resource Recovery and materials and energy recovery.

The ability to sample and conduct reliable laboratory analyses becomes the enforcement tool of the act's mandate to protect the public health and the environment. It permits establishment of a baseline to which subsequent data can be legally compared and evaluated for subsequent compliance actions; provides extra time necessary to develop innovative disposal, reuse and reclamation techniques while acting as an early warning and quality control device for existing facilities and designs; provides the basis for setting standard waste effluents (emission) levels and shaping future design or performance standards; and provides a means for the regulatees to acquire a permit variance. In this light, it is imperative, to all parties of concern, that RCRA's measurement needs be met effectively, expeditiously, and consistently.

What will the study provide? Results presented herein will assist in assessing the progress of RCRA implementation at the State level and the types of technical assistance necessary to enhance that process; and the study will also act as a communication channel among the States and as such, promote technical information exchange. And, lastly, the study provides ASTSWMO's conclusions and recommendations to the National Bureau of Standards concerning the States' capabilities to effectively implement the highly technical measurement aspects of RCRA.

How was the study conducted? We first examined all State and Federal solid waste legislation, regulations, manuals, interim authorization applications, State and/or Federal correspondence and communications and available documents pertaining to the measurement requirements associated with RCRA. After a comparison and analyses of these State documents to the Federal criteria and other State programs, and collation of auxiliary data, field interviews were conducted with the staffs of Pennsylvania, Virginia, Texas, Louisiana, Mississippi and Oklahoma. The purpose of the visits were tri-fold:

- to determine organizational points of contact for policy and technical program initiatives, their needs and priorities ;
- to promote information transfer and technical assistance to the States; and,
- to validate collected data.

Prior to report submittal, results were returned to the States involved for their final approval.

The States' Measurement Needs Task was administered by ASTSWMO's staff under the guidance and with assistance of ASTSWMO's Resource Recovery Committee and with the cooperation of ASTSWMO member States and their staffs. (More detailed information is appended.) The Department of Commerce Advisory Committee, representated by the Board of Director's, provide additional expertise and oversight for the entire grant. Resource Recovery Committee members met three times since task initiation in February, coordinated an expeditious campaign to assure maximum State participation, reviewed and analyzed results, and developed and prioritized the conclusions and recommendation presented herein.

The approach to Task II was highly technical, attempting to answer the following questions:

1. Does the State have adquate laboratory support staff, equipment, and resources or the services of a private contractor to perform RCRA-related measurement activities?

2. What are State laboratory equipment holdings?
3. Are the laboratories certified? Do they have a quality assurance program?
4. Is there adequate laboratory and field protective equipment and clothing?
5. What types of technical assistance do laboratory and field personnel need and from which entities?
6. What are the overall prioritized needs in support of implementing the technical requirements under RCRA?

In summary, the report focuses on the following technical and programmatic aspects relating to the States' measurement needs associated with the implementation of the Resource Conservation and Recovery Act:

- Pertinent federal and state legislation and regulations which require testing/sampling/monitoring procedures;
- State agencies and key personnel responsible for solid/hazardous waste management program;
- Laboratories available to States to perform RCRA-related measurements, and their capability to do so.

It is divided into three sections. Part I presents findings in narrative form, supplemented by State summary charts depicting hazardous waste characteristics, measurement parameters, laboratory programs and needs, and training available. Conclusions and recommendations regarding informational data are also included. Additional input from ASTSWMO's Resource Recovery Committee members was supplied to broaden the report's data base even though field interviews were not conducted. Part II consists of State profiles which highlight solid waste, hazardous waste and resource recovery program objectives; state agency organizational make-up; resources and manpower; and selected regulations. Data on laboratory capabilities obtained from field visits is also presented. Other information and documentation to the individual State's measurement needs is provided as appropriate.

The report presents detailed information obtained from six States which represent a geographic cross section of the country and offer insights into unique problems encountered in rural vs. urban and agricultural vs. industrial States.

Part III of the report details Louisiana's approach to providing the regulated community as well as the regulatee, in this case the State, a consistent and simplified process to comply with RCRA's technical demands. This Analytical Operating Procedures Manual provides a cohesive technical framework and the necessary tools to augment the State requirements specified in Louisiana's Hazardous Waste and Solid Waste Management Plans. Except for the fact that Louisiana does not have its own State laboratory support function, their program resources (manpower/funding) as well as their implementation tools (regulations, plans, manuals) reflect the comprehensive objectives of RCRA in providing sound waste management practices. Therefore, Louisiana's program initiatives have been appended to serve as a potential model upon which consistive State technical programs can be developed.

COLLATION AND PRESENTATION OF DATA

The initial objectives of ASTSWMO's State Measurement Needs Task for the Office of Recycled Materials, National Bureau of Standards, were to:

- Determine the measurement needs associated with RCRA implementation through examination of State solid waste legislation and regulations and State hazardous waste legislation and regulations;
- Evaluate each for associated analytical requirements for field and laboratory activities; and,
- Recommend specific areas of technical assistance for the States which could be provided by NBS.

The measurement needs associated with Federal and State waste management legislation and regulations encompass both hazardous (Subtitle C, RCRA) and non-hazardous (Subtitle D, RCRA) waste. Identification and determination of the nature of the waste (i.e., where it is hazardous/non-hazardous) is the first prerequisite since the type of management techniques utilized will be determined at this point. If the waste is characterized as hazardous, subsequent tracking from generation to disposal is mandatory to achieve complicity with RCRA. If, on the other hand, the waste is non-hazardous in nature, there are no federal regulatory requirements, but voluntary disposal at a permitted solid waste facility is suggested.

Regardless of the facility and type of waste it accepts, specific monitoring requirements are necessary to assure protection of the public health and environment from potential contamination. Hazardous waste facility monitoring requirements are specified by federal regulation; solid waste facility monitoring is voluntary, but suggested. Both, however, are State/site/waste-specific and detailed in the site permit. Other requirements include:

- Establishment of a baseline to evaluate surrounding conditions and development of a basic monitoring scheme;
- Operational and extended analyses to assure absence of contaminants;
- Collection of data to assure engineering design and facility integrity; and,
- Collection of data for enforcement purposes.

In general, possible routes of entry of contaminants into the environment (air, land, water) regardless of the type of activity (transportation, storage or disposal) for either hazardous or non-hazardous waste(s) are via:

- air
- soil
- groundwater
- surface water
- leachate

The parameters to be measured, however, are site and waste specific.

Work commenced on the State Measurement Needs Task in December, 1980. A library of working documents was established and the following documents have been collected to facilitate preliminary overview and analyses of the States' measurement needs:

- RCRA and other related federal environmental laws which require pollution control testing/sampling/monitoring;
- EPA regulations from May 19, 1980 to the present regarding hazardous waste management standards to be achieved;
- State interim authorization applications, solid/hazardous waste plans pertaining to State compliance with EPA hazardous waste characteristics testing protocols;
- State analytical operating procedures manuals to ascertain testing protocols used in State facility permitting processes (i.e., soil, air, leachate, and groundwater monitoring);
- Background documents and studies relating to waste analyses and listings.

Data was corroborated through telephone and written communications and by field visits. All information contained in this report is non-confidential in nature and thus, available as public information.

State requirements for these monitoring expectations and their methods of analyses are at least as stringent as the federal EPA requirements with additional needs cited. The following charts detail and summarize these measurement needs associated with RCRA Subtitle C and D for the States of Louisiana, Mississippi, Oklahoma, Pennsylvania, Texas, and Virginia. Differences are noted. Resource recovery facility monitoring would encompass the same requirements as those for incineration and Subtitle D land facilities.

Charts 1a through 1d present information pertaining to EPA testing criteria to determine characteristics of a hazardous waste, including tests for ignitability, corrosivity, reactivity, and extraction procedures (EP) toxicity. State statutory cites are given to direct the reader to the appropriate State regulation, and State analytical requirements are compared to federal standards. Differences between State and federal testing parameters are shown as "comments."

Charts 2a through 2d summarize Subtitle C measurement needs associated with groundwater monitoring, soil sampling (food chain crops), unsaturated zone (zone of aeration) monitoring, and air sampling around hazardous waste sites. Federal testing parameters and requirements are compared with State requirements, with exceptions, deletions and additional parameters (if any) noted for the individual States.

Chart A further summarizes the data contained in Chart series 1 and 2 by indicating State compliance with federal testing criteria under RCRA, Subtitle C. In some cases, most notably Louisiana, Oklahoma and Pennsylvania, State testing procedures are characterized by the requirement of more stringent testing criteria which are either spelled out in regulations or determined on a site-specific basis by the responsible State environmental/health agency. References to actual deviations are included in data presented in Chart series 1 and 2.

Charts 3a through 3d depict the federal guidelines for Subtitle D solid waste facility criteria involving measurements needs for groundwater, surface water, soil, and air. State compliance with Subtitle D criteria is voluntary, hence the lack of equivalent guidelines in Mississippi, Pennsylvania, and Virginia.

Chart B summarizes data contained in Chart series 3 pertaining to voluntary RCRA, Subtitle D testing criteria. Of the six states examined in-depth, only Texas has adopted substantially equivalent regulations to meet suggested federal testing guidelines for all route-of-entry categories. Louisiana and Oklahoma have adopted rules which comply to federal guidelines for surface water testing, and require more stringent testing criteria in air and soil testing, respectively.

The States' capability to sample/test/analyze the various waste streams at a particular site rests with the availability of a State or private laboratory to perform the actual testing procedures. Some of the laboratories utilized by the States were visited to obtain first-hand information on their capacity to perform RCRA-related sampling and testing activities. Laboratory personnel were asked about their RCRA-related testing programs in general, and data was collected pertaining to their needs in terms of technical assistance, equipment, staffing requirements, and work protection and training.

Chart 4 shows information gathered on the program organization of State/private laboratories available for State use in sampling/testing/analyzing various solid and hazardous wastes. Chart 5 documents State-specific laboratory and technical assistance needs, and Chart 6 shows worker protection needs such as training programs available and protective equipment on hand.

Chart C summarizes the descriptive data in Charts 4 and 5 to delineate laboratory needs in a more general fashion. Information contained in this chart includes a larger sampling of States to reflect both the six original States and other States represented on ASTSWMO's Resource Recovery Committee. Data contained herein is reflective of States' primary and priority laboratory needs -- it should not be taken for granted that a non-response in any category necessarily means that the State does not consider that particular category a secondary need. Time constraints prevent the exploration of every avenue of concern -- Chart C reflects overall critical needs as expressed by the States at a particular point in time, and these needs will continue to be in a state of flux as program and laboratory personnel begin to better understand their roles and responsibilities under the RCRA framework.

Chart D summarizes descriptive information contained in Chart 6. Again, the same caveat applies to this generalization. Comprehensive State training programs are sparce at best, and as responsibilities under RCRA are further delineated in coming months/years, training needs will surface in areas not now envisioned at the State level. At the present time, however, available training options are noted as described by State personnel, and present needs are indicated.

Also included as a source of reference is Chart E which summarizes planned activities at the federal level for U.S. EPA Research and Development Laboratories in the areas of laboratory and field hazardous waste monitoring research, solid waste health effects screening, and solid waste environmental engineering and technology research. Proposed target dates for completion of tasks are given, although a 25% funding reduction has impeded strict adherence to anticipated task timetables. The chart should serve as an indication of federal initiatives and their anticipated completion date to support the measurement requirement objectives of RCRA. Failure to fulfill these expectations as soon as possible will further delay program efforts and RCRA implementation.

Background information contained in the State Profile section of this report has been collected and remains in-house. Six States (Louisiana, Mississippi, Oklahoma, Pennsylvania, Texas, and Virginia) were visited by staff to further delineate or substantiate areas of concern in program implementation and laboratory support capabilities. Upon completion of the profiles, States were requested to up-date and approve all information contained therein.

CONCLUSIONS

According to program documentation, most States have laboratory programs which are substantially equivalent to the federal requirements. In practice, however, there are some shortcomings.

State environmental laboratories have evolved over the past decade in conjunction with America's advancements in environmental management. Many laboratory personnel have gained most of their professional experience working primarily in water programs. In most States, the environmental laboratory has become an organizational unit serving all environmental programs. And because of this situation, the laboratory protocols and procedures being utilized have largely been developed for other uses and are not strictly applicable to the analysis of wastes. This has created a situation of confusion, loss of time, and questionable safety practices. The nature of laboratory work is to process samples according to the needs specified by client programs.

At the State level, the process of preparing and submitting RCRA Interim Authorization applications has been a hectic activity. Most of the work has been done under severe time constraints, compounded by the complexities of working in a program area in which few people have had much experience. The study found that few laboratory personnel had an integrated understanding of their role in RCRA programs.

While most laboratories are functioning adequately, they are hampered by the fact that waste analysis is a totally new field and technical data is relatively non-existent. There is a serious need for a formal operating procedures manual to insure consistency (note example in Part III). This resource document should prescribe procedures ranging from collection, preservation and transportation of representative samples, to analytical laboratory strategies. In addition, standard methods and procedures are not available.

Even more alarming is the virtual non-existence of adequate laboratory and field safety equipment and training. Few field inspectors have any safety protection and most laboratories fall far short of what is required for the new responsibilities of hazardous waste management. The safety concerns become even more important in light of the lack of standard operating procedures. With the tremendous emphasis on RCRA program development, the States do not currently and will not in the future have the resources to meet these needs.

All States have indicated an urgent need for training and technical assistance. Training programs should focus on field inspection and sampling techniques, transportation and preservation of samples, and laboratory staff training that includes procedures as well as a holistic perspective on the laboratory's role in RCRA

RECOMMENDATIONS

1. Development of a Laboratory Analytical Manual to include laboratory and field sampling procedures, preservation, storage, and transportation of samples, and standard analytical procedures, supplemented by on-going training programs designed specifically for laboratory and field personnel.

2. Establishment of an inter-state laboratory network to provide special assistance for unique problems.

3. Development of a standard RCRA laboratory certification program.

4. Development of a standard RCRA Quality Assurance Program.

5. Accelerated development and availability of standard reference materials, including but not limited to:

   - elluents
   - simple and complex matrices
   - sludge
   - leachate

6. Accelerated development of standard test protocols for sampling and analysis.

7. Development of a standard reference library.

8. Development of a standard method whereby State laboratories could prepare their own secondary reference materials.

safety-kleen.

December 7, 1981

KKH 81-288

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Dave Durenberger
United States Senator
Room 507 Carroll Arms Building
300 First Street, N.E.
Washington, D.C. 20510

Re: Senate Intergovernmental Relations Subcommittee of the Governmental Affairs Committee Study and Hearings on the Subject of "State Implementation"

Dear Senator Durenberger:

As the President and Chief Executive Officer of the nation's largest metal degreasing solvent recycler, I thought that our experiences may expand on the testimony presented on November 24, 1981.

The following information describing our business, the process employed and problems encountered is submitted for the record.

I. DESCRIPTION OF BUSINESS ACTIVITY

The Safety-Kleen Corp. of Elgin, Illinois, is an international, service-oriented company, whose customers are primarily engaged in automotive repair and industrial maintenance. We offer a leasing service for hydrocarbon and chlorinated solvents and small parts washing equipment. A unique feature of our business concept is that the solvents remain the property of Safety-Kleen Corp., and two-thirds of the clean solvent we lease has been previously used by our customers. The clean solvent is produced by us from used solvent that we collect from our customers and beneficially recycle.

The Safety-Kleen parts washers are leased to customers, and the leasing charge includes regularly scheduled solvent changes and machine maintenance. Our business is conducted from local sales branches located in 47 states domestically that warehouse the products and equipment required to service the customers in their sales areas. On a regular basis our service representatives furnish clean solvent to our customers, pick up the used solvent and assure that the leased equipment is in good working order. In 1979 we expanded the scope of our operations to make our solvent leasing service available to owners of parts cleaning equipment, regardless of manufacturer, using our types of solvents.

Generally, the solvents are distributed and collected by our service representatives in covered drums and transported in specially equipped, closed route trucks. The clean solvents are distributed from and the used solvents are returned to the sales branch where there are separate storage tanks for the clean and used mineral spirits and warehouse space for the drums of both clean and used chlorinated solvent.

In our commercial leasing service, which comprises the bulk of our business, the quantity of used solvent collected from each machine serviced usually ranges from 6 to 12 gallons. The solvent is contained in partially filled 16 and 30 gallon drums which double as the solvent reservoir of the parts washer.

Periodically, a company truck is dispatched from one of our six nationwide solvent regeneration facilities to the sales branch to deliver a load of clean solvent and pick up a load of used solvent. The mineral spirits are transported in bulk tank trucks between the sales branches and the regeneration centers, and the chlorinated solvent remains in the covered drums during transfers between the sales branches and the regeneration centers. About 97 percent of the solvent we handle is mineral spirits, while the balance is a mixture of chlorinated and water phase solvents. We are presently developing an industrial sales program where drums of solvents will be distributed from and returned to the regeneration centers, bypassing all handling at the sales branches.

II. CLOSED LOOP SOLVENT CYCLE

Our solvent cycle is essentially a closed loop going from the sales branch to the customer, from the customer to the sales branch, from the sales branch to the regeneration center, and then from the regeneration center back to the sales branch. The small quantities of residue remaining after distillation of the used solvent at our solvent recycling plants are disposed of in accordance with applicable laws and regulations.

This closed cycle provides Safety-Kleen with most of its solvent requirements; the resultant stabilized cost benefits are passed on to its customers. Ownership of the solvent remains with Safety-Kleen; the sales branch managers are accountable for the quantities of clean and used solvents handled by their branch operations.

Safety-Kleen has always attempted to achieve the goals of environmental preservation and resource conservation. The recycling of the solvent used in our parts cleaner service saves the U.S. approximately 550,000 barrels of crude oil each year. We feel that we provide a service, not only to our customers, but to the country, in that we provide an environmentally correct and desirable means of handling solvent from small quantity users not sophisticated in the complex laws and regulations governing solvent disposal. If it were not for a service such as ours provided to users of relatively small quantities of solvents, most used solvent would be improperly disposed of, either in the sewers or on the ground. While the impact of any one user on the environment without the service we provide might be negligible, when considered in the context of the hundreds of thousands of customers we serve, the impact is positive, beneficial and significant.

III. STATE RCRA REGULATIONS

Despite our committment to recycling through environmentally acceptable means, we are presently encountering problems; particularly, as related to State RCRA Regulations which thwart the attainment of our common objectives. We explained these objectives in a letter (copy attached) dated July 30, 1981 to Ms. Gorsuch. By letter of September 4, 1981 (copy attached), Mr. Christopher Capper, Acting Assistant Administrator responded advising in essence that U.S. EPA's actions are restricted by the statutes. This is why we are turning to your subcommittee for assistance.

Several examples of the type of difficulties we have experienced are as follows:

1. The following is excerpted from a letter prepared by the Chief of a State Bureau of Hazardous Waste:

> The Administration's requirements for an application for registration of a new hazardous waste facility are the submission of all of the plans and reports specified in Subchapter 12 of the Hazardous Waste Management Regulations. The Administration requires all such plans and reports for each new facility application even though all of these regulations have not yet been adopted, because, though it is possible that the proposed regulations may be modified before adoption, the general areas of concern will remain as set forth in the present draft. (Emphasis added)

The foregoing application is being prepared at a cost in excess of $60,000 by a private consulting firm. Time required to complete the application, six months. Subchapter 12 has already been revised on one occasion, necessitating the additional expenditure of $6,000.

2. An Eastern State with interim authorization requires local hazardous waste site approval prior to the issuance of a permit. The involved State Agency has not advised the local jurisdictions of their responsibilities and obligations. Since our facilities within the State have been in existance for a number of years, obtaining the necessary permits is imperative. We have retained a consultant with the responsibility of obtaining the necessary site permits and educating the local agencies in their responsibilities and obligations.

3. Another State with interim authorization requires quarterly reports summarizing the manifested shipments within the quarter. The report requires no information unique to the manifest other than the manifest number. Shipping documents required by the U.S. D.O.T. could fulfill the quarterly reporting requirement, eliminating the need for the manifest.

The above illustrates the type of problems we are encountering in attempting to comply with what has become a "crazy quilt" pattern of State RCRA programs.

U.S. EPA has been contacted relative to the applicability of the Federal RCRA Regulations. Mr. John Lehman, Director, Hazardous and Industrial Waste Division, advised by letter of July 21, 1981 (copy attached) that the materials which we handle are not currently regulated by RCRA, if the materials are being beneficially recycled.

IV. CONCLUSIONS

The objectives of the Resource Conservation and Recovery Act are clearly identified under 42USC6902. Our business concept and the manner in which we conduct our operations are in accord with the objectives. Unfortunately, many States do not provide recycler exemptions and the full scope of the regulations and requirements applicable to disposal sites are applied to our facilities, even though we do not dispose of any solid waste on our property.

It is abundantly clear that the U.S. EPA must be more assertive to ensure that the objectives of the the RCRA are met. Further, it is evident in many instances that the individual States do not have the technical expertise or the management ability to develop and carry forward their programs.

If you desire further information relative to the impact of the hazardous waste regulations on our business, please feel free to contact me.

Sincerely,

Donald Brinckman

DONALD BRINCKMAN
President

DB/bcs
Enclosures
cc: Senator Charles Percy
    Senator Alan Dixon
    John Quarles; Morgan, Lewis & Bockius